[COMMITTEE PRINT]

SUMMARY OF TESTIMONY ON H.R. 6715 ("THE TECHNICAL CORRECTIONS ACT OF 1977")

BEFORE THE

COMMITTEE ON WAYS AND MEANS

ON SEPTEMBER 8, 1977

(INCLUDING STATEMENTS FOR THE RECORD)

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

AND THE

CONGRESSIONAL RESEARCH SERVICE

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INTRODUCTION

This pamphlet summarizes the testimony received on H.R. 6715 the ("The Technical Corrections Act of 1977") at the public hearing held by the Ways and Means Committee on September 8, 1977, as well as statements submitted for the record (received by September 21).

The summary of testimony is arranged by topic in accordance with the provisions of H.R. 6715, as introduced: Part A summarizes the testimony with respect to the general income tax and administrative provisions; Part B summarizes the testimony regarding the foreign income provisions; Part C summarizes the testimony concerning the estate and gift tax provisions; and Part D summarizes the testimony on the clerical corrections and cross-reference changes. In addition, Part E summarizes by major subject area testimony on tax provisions not included in H.R. 6715.

This material was prepared with the assistance of Harry G. Gourevitch, Senior Specialist in Taxation and Fiscal Policy, Congressional Research Service, and Marie Morris and Howard Zaritsky of the American Law Division of the Congressional Research Service, Library of Congress.

SUMMARY OF TESTIMONY ON H.R. 6715

A. Amendments to Income and Administrative Provisions (secs. 2(a)-(p), (r)-(x) of the bill)

Minimum Tax Imposed on Trusts and Estates (secs. 2(b)(3), (4), and (5))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the bill be amended to provide that the charitable contributions deduction be treated as a deduction in determining adjusted gross income not only in the case of wholly charitable trusts under Code section 4947(a)(1), but also in the case of charitable trusts under Code section 4947(a)(2). States that this recommendation extends only to charitable income trusts created on or before January 1, 1976, the effective date of the 1976 Act.

John S. Nolan, Miller & Chevalier, Washington, D.C. (Sept. 8)

Urges that section (2)(b)(3) of the bill be expanded in accordance with the Treasury Department recommendations to provide that, for purposes of the minimum tax, the charitable contribution deduction be treated as a deduction in determining adjusted gross income in the case of certain "split-interest" trusts (Code section 4947(a)(2)).

John B. Huffaker, on behalf of the Estate of Leonard Pool and the Estate of Wilbur H. Haines, Jr. (Sept. 8)

Supports the provision of section 2(b)(3) to the effect that in the case of estates the charitable deduction is not an itemized deduction. Believes that the application of the minimum tax to the estates of decedents is not justified.

William Penn Foundation (statement)

Recommends that irrevocable trusts established prior to December 31, 1975, which are required to set aside or distribute all of the income for charitable purposes be able to deduct such amounts in arriving at adjusted gross income for purposes of the minimum tax on excess itemized deductions.

Crane C. Hauser, Winston & Strawn, Chicago, Illinois (statement)

Recommends that all trusts and estates described in Code section 4947(a)(1) (i.e., all charitable trusts), substantially all of the assets of which are devoted to charitable purposes, be exempted from the minimum tax provisions.

Laurence Keiser, Hanigsbert, Delson & Broser, New York, N.Y. (statement)

Recommends that investment interest not in excess of investment interest income be allowed as a deduction from gross income in reach-

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ing adjusted gross income for purposes of the minimum tax on excess itemized deductions.

Earl Hall, C.P.A., Lewiston, Idaho (statement)

Criticizes proposed technical corrections bill, section 2(b) (3), dealing with computation of excess itemized deductions in the case of trusts and estates, because it is unnecessarily complex and because it does not show how to treat the deduction for estate taxes attributable to income in respect of a decedent.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson Thacher & Bartlett, New York, N.Y. (statement)

Recommend amending Code section 642(c) (1) to provide for the allowance of a deduction in certain instances in which the section apparently would not allow a deduction and to provide for the denial of a deduction, in certain other cases, in which Code section 642(c) (1) apparently would allow a deduction, for amounts of income, attributable to gains carried over from a decedent, paid or permanently set aside for charitable purposes.

William J. Lehrfeld, Webster & Chamberlain, Washington, D.C. (statement)

Recommends expansion of the provision of H.R. 6715 which would provide an exception for excess itemized deductions treated as a preference for minimum tax purposes in the case of an estate or a wholly charitable trust. Recommends changes to exempt a charitable remainder trust created before July 26, 1969 (the pooled income fund of Shriners Hospitals for Crippled Children), and to amounts which it may receive as the beneficiary of a charitable income interest trust (whenever created). Also recommends changes concerning the treatment of long-term capital gains deduction as a preference for these trusts.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends that charitable deductions claimed by charitable old style split interest trusts and lead trusts (established before the Tax Reform Act of 1969) should only be treated as an itemized deduction type of tax preference to the extent that some beneficiary other than a charity receives a benefit. Recommends further that any deduction under Code section 642(c) should not be treated as an itemized deduction regardless of the nature of the trust. Recommends further that trusts and estates not be subject to minimum tax on excess itemized deductions in year of termination or, alternatively, that a beneficiary should not have to report distributed excess deductions as an item of tax preference in the termination year.

Harold F. Measley, Tax Counsel, Wilmington Trust Company (statement)

Recommends that section 2(b) of the bill be amended to provide that the charitable deductions of all charitable lead trusts be considered deductions in reaching adjusted gross income.

Thomas P. Sweeney, Richards, Layton & Finger, Wilmington, Delaware (statement)

Recommends the exemption of charitable lead trusts from the minimum tax, a detailed definition of what constitute "costs paid or incurred in connection with the administration of the trust," and express exclusion from the minimum tax for terminating distributions of excess deductions from a charitable trust.

Norman A. Sugarman, Baker, Hostetler, Frost & Towers, Washington, D.C. (statement)

Recommends that the deduction for capital gains realized by a pooled income trust fund should not be treated as an itemized deduction for purposes of the minimum tax on excess deductions. Recommends further that charitable lead trusts be excluded from the minimum tax on excess deductions.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that Code section 57(b)(2)(C) be amended so as to exclude from adjusted itemized deductions, for purposes of the minimum tax on trusts and estates, administration expenses in excess of gross income of the trust in the year in which it terminates, since these expenses are beyond the control of the beneficiaries. Recommends further that with respect to pooled income trusts, charitable lead trusts and pre-1969 charitable remainder trusts, deductions allowed for charitable transfers or amounts set aside for charities should qualify as a deduction from gross income rather than as an itemized deduction. Believes that treating these distributions as itemized deductions imposes a double tax on the trusts where none should be imposed.

Construction Period Interest and Taxes (sec. 2(e))

Kenneth G. Hance, Jr., President, and Alan J. B. Aronsohn, Tax Counsel, National Realty Committee

Recommend that (1) the construction period commence at the start of actual, physical construction of improvements, rather than with land preparation, because land preparation is a necessary preliminary step to acquiring financing; (2) the statute provide for suspension of the construction period during *bona fide*, temporary interruptions in construction; and (3) allocation of construction period interest and taxes be permitted between portions of realty upon which there is construction and portions upon which there is no construction.

John J. Szymanski, Member, Tax Legislative Subcommittee, International Council of Shopping Centers (Sept. 8)

Recommends that (1) the construction period commence at the start of actual, physical construction of improvements, rather than with land preparation, because land preparation is a necessary preliminary step to acquiring financing; (2) the statute provide for suspension of the construction period during *bona fide*, temporary interruptions in construction; (3) allocation of construction period interest and taxes be permitted between portions of realty upon which there is construction and portions upon which there is no construction; and (4) the Code section be clarified as to the applicable method of proration of the current year's taxes between the construction and non-construction period at the beginning and end of a project.

National Association of Realtors (statement)

Opposes the adoption of section 2(e) of the bill and recommends that the construction period be deemed to commerce only with the start of actual physical construction and not with land preparation or improvement. Recommends further that provision be made for suspension of the construction period when actual construction is temporarily suspended for valid reasons.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that Code section 189 be amended to make it clear that unamortized interest and taxes are a part of the investor's basis and accrue to the benefit of a decedent's estate and that the amortization of section 189 costs after the taxpayer's death continue on the same schedule that was available to the deceased taxpayer. Recommends further that an amendment to Code section 189 clarify whether the section is to be applied at the partner or partnership level. Recommends further that an amendment to Code section 189 clarify the status of section 189 treatment on disposition of a partnership interest subsequent to a like-kind exchange.

Tax Treatment of Certified Historic Structures (sec. 2(f))

Ernest A. Connally, Associate Director, Preservation of Historic Properties, National Park Service, Department of the Interior (Sept. 8)

Supports section 2(f) as a distinct improvement of section 2124 of the 1976 Act.

Douglas Wheeler, National Trust for Historic Preservation (statement)

Supports amendments relating to tax provisions for historic structures (sec. 2(f) of H.R. 6715). In addition, recommends that eligibility for charitable contributions deduction be restored for contributions of conservation easements of at least 30 years duration. Also, recommends that buildings designated as local landmarks under State or local law be treated as certified historic structures where the local statutes contain eligibility criteria substantially similar to federal law.

Ronald S. Borod, Rosenfield, Borod, Bogatin & Kremer (statement)

Opposes section 2(f) of the bill because it would unduly restrict rapid amortization of buildings, which are not of historic significance themselves but which are located in districts which are of historic significance.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that section 2124(e) of the 1976 Act, setting the effective date for the charitable contribution deduction for gifts of certified historic structure easements, be amended to make it clear that the effective dates with respect to transfers after June 13, 1976 and before June 14, 1981 are intended to apply only to transfers of partial interests described in Code section 170(f)(3)(B)(iii) and (iv) (historic structure interests) and that the effective date with respect to partial interests described in Code sections 170(f)(3)(B)(i) and (ii) (interests in personal farm or residence) should be the same effective date contained in the Tax Reform Act of 1969.

Nancy B. Negley, Advisor to the National Trust for Historic Preservation, San Antonio, Texas (*statement*)

Urges adoption of section 2(f) of the bill.

Mary Ann Castleberry, President, San Antonio Conservation Society, San Antonio, Texas (*statement*)

Urges adoption of section 2(f) of the bill.

Foreign Conventions (sec. 2(g))

Thomas H. Boggs, Jr., Counsel for Ad Hoc Committee on section 602 of the Tax Reform Act of 1976 (*Sept. 8*)

Supports the proposed clarification of section 2(g) to the effect that transportation expenses will be partially disallowed only if less than one-half of the total days of the trip are devoted to business-related activities.

Recommends the following additional changes to section 274(h) of the Code:

The definition of a foreign convention in Code section 274(h)(6)(A) should be narrowed to exclude, (1) foreign business meetings by groups such as the employees of a single multinational corporation attending a foreign instructional seminar, and (2) meetings of international organizations with worldwide memberships.

The present limitation on the deduction of subsistence expenses to the government per diem rate (Code section 274(h)(5) should be dropped except in certain limited cases. If the limitation is retained, the section should be clarified to the effect that subsistence expenses are to be limited on an aggregate basis rather a daily basis.

The present substantiation requirement of Code section 274(h)(7) which requires the taxpayer to attach to his return a written statement by an officer of the sponsoring organization should be amended to require that the taxpayer merely maintain the information or statement in his records.

The definition of "foreign" in Code section 274(h)(6)(A) should be limited to meetings held in countries or places outside of North America or the Caribbean.

William F. Ragen, Counsel for the Bermuda Department of Tourism (*Sept. 8*)

Supports the changes to Code section 274(h) recommended by Thomas Boggs on behalf of the Ad Hoc Committee on section 602 of the 1976 Act.

Robert E. Juliano, Legislative Representative of the Hotel and Restaurant Employees and Bartenders International Union (*AFL–CIO*) (*Sept. 8*)

Recommends that section 274(h) be amended so as to exclude from its limitations foreign conventions held in North America.

Albert L. McDermott, Washington Representative of the American Hotel & Motel Association (*statement*)

Recommends that a North American exception to exempt Canada, Mexico, the Caribbean and Bermuda be adopted and the requirement the subsistence expenses not exceed civil service per diem rates be repealed.

Dallas F. Whaley, Executive Vice President, American Society of Plastic and Reconstructive Surgeons, Inc. (statement)

Recommends that a Canadian exception be adopted, that the record-keeping requirement be repealed, and that the term "convention" not include private business or professional meetings, incentive travel and international meetings.

J. Hilton Watson, Executive Vice President, Alabama Forestry Association (statement)

Recommends the exclusion of international meetings, business meetings and incentive travel; recommends a "North American" exception; recommends that each individual maintain his own records with a certification from the sponsoring organization that they certify the individual was registered; and recommends that the federal per diem limit be removed.

William M. Shumate, Vice President, Travel Business Incentives, Inc.; James B. Goodman, Director Administration, E. F. MacDonald Travel Co.; Henry S. Stolar, Vice President and Associate General Counsel, Martiz, Inc.; William E. Marling, Vice President, S&H Motivation and Travel, Inc.; J. E. Trabert, President, International Travel Associates, Inc.; and John Heim, Vice President and General Counsel, Premium Corporation of America (statement)

Indicate that Code section 274(h) enacted by the 1976 Act has created uncertainty as to whether a company will still be allowed to deduct the expenses of an incentive foreign travel award to an employee or dealer. Recommend that section 274(h) be clarified to make it clear that such expenses are deductible to the company.

Donald B. Eden, Assistant Vice President, The Savings Bank's Association of Connecticut, Hartford, Connecticut (statement)

Supports proposed technical corrections to 1976 Act foreign convention rules.

John R. Horan-Kates, Director, Marketing & Corporate Relations, Vail Associates, Inc., Vail, Colorado (statement)

Opposes the proposed amendment to Code section 602 and recommends that Code 602 be repealed. Believes that although the section is aimed at foreign conventions, it could also lessen interest among travel agents in organizing attendance at domestic conventions.

Wesley N. Fach, Vice Presidet, Tax-Legal Division, National Foreign Trade Council, Inc. (statement)

Recommends that Code section 274(h) be amended to specifically exclude: (1) employees in the foreign country where the foreign convention is held from the restrictions on deduction of expenses; (2) foreign conventions of groups that are international in scope.

Sheldon I. London, Director of Government Relations, National Retail Hardware Association (statement)

Endorses the position of the American Society of Association Executives regarding section 2(g) of the bill. Believes that section 2(g) is overly restrictive in that (1) it fails to exclude the Caribbean countries, Canada and Mexico from the definition of foreign countries; (2) it limits the maximum deduction to the government per diem rate for the particular country, and (3) the record-keeping requirements are so burdensome as to be virtually impossible to comply with. Urges the Committee to adopt the amendments suggested by the American Society of Association Executives.

Exchange Funds (sec. 2(i))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that the bill's proposed nonrecognition of realized losses on a merger of two or more commonly-controlled investment companies be changed so that such losses will be recognized.

Also recommends that the amendments made by section 2(i)(1) of the bill not be made retroactive to the original effective date of Code section 368(a)(2)(F), as transactions may have been entered into in reliance on the clear language of Code section 368(a)(2)(F) as originally passed.

Committee on Reorganizations, Tax Section, New York State Bar Association (*statement*)

Recommends delay in the effective date of the provisions of the bill which would deny recognition of loss on the combination of two or more investment companies and which defines the word "securities."

At Risk Provisions (sec. 2(j))

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*Statement*)

Recommends that an objective safe harbor provision be added to Code section 465 which would determine when leasing section 1245 property is a "minor incident" of a lease of real property for purposes of the "at risk" limitation. Recommends further that consideration be given to excluding from the "at risk" provisions personal property located in furnished apartments, hotels and motels. Recommends further that any capital gains realized upon the taxable disposition of an asset involved in a business subject to the "at risk" limitations should relate back and release deferred losses in the amount of any gain to the extent the income would have been classified as income from the Code section 465 activity had the property been sold when the losses were incurred. Recommends further that Code section 453(b)(3)(B) be clarified as to whether loans from a person related to the taxpayer are considered to be at risk with respect to the taxpayer's activity if the taxpayer is personally liable on the loans.

Property Transferred to Trust at Less Than Fair Market Value (sec. 2(m))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that Code section 644 be amended to provide that a transferor shall be taxed only on gain recognized (rather than *realized*) on a sale or exchange of property by a trust within two years of its transfer to the trust.

Also recommends that Code section 44 be amended to clarify that in determining the amount of tax that would have been paid by the transferor of the property had he, rather than the trust, sold such property, any tax attributes of the transferor which have been carried forward into, or may be carried forward or backward from, the year of sale be disregarded.

James A. Larpenteur, Jr., Souther, Spaulding, Kinsey, Williamson & Schwabe, Portland, Oregon (statement)

Objects to the portion of section 2(m) of the bill which provides an effective date of May 21, 1976, as prior to the proposed amendment Code section 644(f) clearly provided that lower tax bracket treatment was applicable after the second year in the case of installment sales, and practitioners relied on that language in their tax planning.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends statutory clarification to ensure that the gain on the sale of such property is not taxable when the transferor is either a charitable lead trust or a fully charitable trust.

Thomas P. Sweeney, Richards, Layton & Finger, Wilmington, Delaware (statement)

Supports the adoption of section 2(m) of the bill and recommends that, in keeping with the legislative intent, the tax be imposed when the trust "recognizes" gain, rather than when it "realizes" gain.

Harvie Branscomb, Jr., and Kenton McDonald, Branscomb & Miller, Corpus Christi, Texas (statement)

Recommends that the tax be imposed when the trust "recognizes" gain rather than when it "realizes" gain, to avoid tax on a number of nonrecognition transactions, including reorganizations which would otherwise be tax-free.

Allowance of Foreign Tax Credit for Accumulation Distributions (sec. 2(n))

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

Endorses section 2(n) dealing with the allowance of the foreign tax credit for accumulation distributions.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends that (1) each element of the taxable portion of an accumulation distribution made to a nonresident alien should be recognized for withholding tax purposes, and the trustee be permitted to offset taxes paid by the trust against the taxes to be withheld at the source of the distribution; (2) capital gains included in a prior year's distributable net income should retain their character when made part of an accumulation distribution to a United States citizen or resident beneficiary.

Renato Beghe, Tax Section, New York State Bar Association (statement)

Supports changes of sec. 2(n) of H.R. 6715 to make available foreign tax credit to beneficiaries receiving accumuation distributions from domestic and foreign trusts. Suggest further clarification dealing with current distributions from trusts.

Thomas P. Sweeney, Richards, Layton & Finger, Wilmington, Delaware (statement)

Recommends that there be a further explanation of the rationale for treating differently domestic trusts and foreign trusts with respect to whether the beneficiary is bound by the trustee's election to utilize the foreign tax credit.

Richard H. Appert, White & Case, Washington, D.C. (statement)

States that section 2(n) of the bill does not go far enough in eliminating inequities of 1976 Act changes on accumulation distributions by foreign trusts created by nonresident aliens for nonresident alien beneficiaries. Notes that the 1976 Act elimination of the exact method throw-back rule and the 6% per annum additional tax on accumulation distributions can create a tax liability where none should exist, if the trust was created by nonresident aliens for nonresident alien beneficiaries and if at the trust's termination the remainder is paid to a former nonresident alien who became a U.S. citizen or resident more than three years before the trust's termination. States that under the 1976 Act the full amount of accumulated income and capital gains will be taxed to the remainderman even though, had such amounts been distributed in the years in which they were accumulated, there would have been no tax.

Limitation on Allowance of Partnership Losses in the Case of Nonrecourse Loans (sec. 2(o))

Kenneth G. Hance, Jr., President, and Alan J. B. Aronsohn, Tax Counsel, National Realty Committee (Sept. 8)

Recommend that committee report make clear that 1) the rental of furniture, fixtures, and other tangible personalty normally associated with rentals in apartment houses, hotels and motels be excluded from Code section 465(v)(1)(C); 2) a partnership the principal activity of which involves the ownership of apartments, hotels and motels be treated as within the real property exception in Code section 704(d); and 3) partnerships qualify for the real property exception of Code section 704(d) may enter into arm's length transactions, such as leases, with related entities not qualifying for the section 704(d) exception.

John J. Szymanski, Member, Tax Legislative Subcommittee, International Council of Shopping Centers (Sept. 8)

Recommends clarification in the Committee report to the effect that (1) the rental of furniture, fixtures and other tangible personal property normally associated with the rental of stores in shopping centers is excluded from the audit of Code section 465; and, (2) a real estate partnership qualifying for the section 704(d) exception does not nullify that exception by contracting at arm's length with related entities engaged in other activities.

Albert B. Ellentuck, National Tax Partner, Laventhol & Horwath (Sept. 8)

Believes that the purpose of the real estate exception in Code section 704(d) was to exclude nonrecourse debts on real estate from the "at risk" limitations. States that the amendment proposed by section 2(o) may not cover hotels, restaurants, health clubs, and various retail operations. Proposes that the real estate exception of section 704(d) be made applicable to any "liabilities required for the construction, development or acquisition of real property (other than mineral property), or for the refinancing of such liabilities."

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

Proposes inserting the word "investment" at the end of section 2(o)(1) to clarify the fact that a partnership holding real estate for investment is entitled to the exclusion from the "at risk" provision of section 704(d).

Notes that the current language in Code section 704(d) appears to exempt from the at risk provisions partnerships that invest in real property as well as partnerships that operate a business on real property owned by others (such as a hotel operated in a leased building). States that proposed change appears to exempt only the owning partnership and not the operating partnership, and questions whether this result is intended. Suggests using another word besides "holding" if the provision is intended to apply to both owners and lessees.

New York State Bar Association, Tax Section, Committee on Partners and Partnerships, Special Committee on Incentives (statement)

Recommends that section 2(o) of the bill be amended to clarify the real estate exception to the general "at risk" rule. Suggests that an asset test be adopted rather than an activities test.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that Code section 705 be amended to provide that no adjustment to basis be made in the case of losses which are not available to the partners because of the Code section 704(d) "at risk" limitation. Recommends further that Code section 704(d) be amended to exclude corporations other than small business corporations and personal holding companies from the "at risk" limitations of that section.

Albert L. McDermott, Washington Representative, American Hotel & Motel Association (statement)

States that it is unclear whether the real estate exception in Code section 704(d) applies to hotels and motels which are in the business of renting furnishings and providing services, as well as renting rooms. Believes that section 2(o) of the bill does not provide the needed clarification. Recommends that Code section 704(d) not apply to "nonrecourse loans secured by real estate" and that the Committee report clear up the present ambiguity relating to hotels and motels.

Herbert E. Schwartz, Luis C. DeCastro, and Clifton B. Cates, III, of Troy, Malin & Loveland, Los Angeles, California (Statement)

Recommends that section 2(o) be clarified so as to make it clear that the limitation of Code section 704(d) does not apply to partnerships holding real estate indirectly through a second partnership and to partnerships holding real estate for investment.

Jerry L. Oppenheimer, Mayer, Brown & Platt, Washington, D.C. (statement)

Recommends clarifying Code section 704(d) exempting from the general "at risk" limitations applicable to partnerships those which hold real estate for sale or rental either directly or through other partnerships.

Treatment of Pensions and Annuities for Purposes of Maximum Tax on Personal Service Income (sec. 2(t))

Renato Beghe, Chairman, Tax Section, New York State Bar Association (statement)

Cautions that the proposed technical correction would exclude from the definition of personal service income in Code section 1348 all pensions paid to partners or directors through nonqualified deferred compensation plans, and suggests amendments to classify such distributions as personal service income.

Certain Grantor Trusts Treated as Permitted Shareholders of Subchapter S Corporations (sec. 2(u))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that section 2(u) of the bill which would permit a grantor trust to be an eligible shareholder of a Subchapter S Corporation for 60 days following the grantor's death be amended to allow such trust to remain an eligible shareholder for two years after the grantor's death if the trust is included in the grantor's gross estate.

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

States that the Tax Section endorses section 2(u), clarifying the right of a grantor trust to be a shareholder of a Subchapter S Corporation.

Other Comments

Richard J. Sullivan, C.P.A., Menlo Park, California (statement)

Recommends deletion of provisions in H.R. 6715 dealing with either capital gains or minimum tax, and suspension of debate on these matters until the Administration tax reform proposals are produced.

Earl Hall, C.P.A., Lewiston, Idaho (statement)

Suggests suspension of debate over Technical Corrections Act and addition of this act to Administration tax reform proposals when introduced.

B. Foreign Income Provisions (sec. 2(q) of the bill)

Possessions Corporations (sec. 2(q)(1))

Robert B. White, Coral Gables, Florida (*Sept. 8*)

Strongly supports section 2(q)(1) of the bill which would deny the foreign tax credit on distributions by a possession corporation to corporate shareholders, but would allow the foreign tax credit to individual shareholders of possessions corporations.

Hon. Baltasar Corrada, Resident Commissioner, Puerto Rico (*statement*)

Supports subsection 2(q)(9) of the bill which would amend Code section 936 to allow a credit for taxes paid to a possession by a possessions corporation on the sale of substantially all the assets used by such corporation in the active conduct of a trade or business.

Supports subsection 2(q)(1) which would amend Code section 901(g) to allow a foreign tax credit for taxes imposed on distributions from possessions corporations to United States individual shareholders.

Richard Katcher, Baker, Hostetler & Patterson, Cleveland, Ohio (*statement*)

States that section 2(q)(9), which would disallow the section 936 credit on income from a sale or exchange of carryover basis property, is inconsistent with the purposes of Code section 936, as it would discourage reincorporation of a Puerto Rico possessions corporation as a domestic corporation. Notes that the bill's exception for property transfers from "a possessions corporation" probably applies only to a domestic corporation meeting certain income source requirements and thus excludes a transferor corporation organized in Puerto Rico. Suggests that the possessions corporation exception be broadened to include a corporation organized in Puerto Rico if it meets the section 936 income source requirements.

Foreign Tax Credit Adjustments for Capital Gains (sec. 2(q)(2))

Wesley N. Fach, Vice President, Tax-Legal Division, National Foreign Trade Council, Inc. (*statement*)

Believes that capital gain derived by a corporation upon liquidation of a foreign corporation in which it owns stock should not be subject to the rule of Code section 904(b)(3)(C)(ii), providing that gain from the sale or exchange of personal property without the United States shall be treated as U.S. source income for foreign tax credit limitation purposes unless a foreign tax of at least 10 percent was paid on the gain. Recommends that the section be amended to exclude gains from a liquidation or dissolution of a foreign corporation.

T. O. Thorsen, General Electric Co., Fairfield, Conn. (*statement*)

Recommends that the rule of Code section 904(b)(3)(c)(ii) should not apply in the case of a capital gain realized by a corporation upon liquidation of a foreign corporation in which it owns stock, if the foreign corporation can be dissolved only within the country in which it is organized, regardless of whether or not the foreign corporation derived more than 50 percent of its gross income from sources within such country or that country imposes a tax of at least 10 percent on the liquidation gains.

Capital Losses for Recapture Purposes (sec. 2(q)(4) of the bill)

Leonard Silverstein, Counsel, Champion International Corporation (*Sept. 8*)

Opposes the enactment of section 2(q)(4), which would amend the definition of overall foreign losses (Code section 904(f)(4)) to eliminate the restriction against including capital loss carryovers and carrybacks. Alternatively, recommends that section 2(q)(4) be enacted only if Code section 904(f) is amended to exclude from the loss recapture provisions "termination losses from dispositions which are incurred under *bona fide* business circumstances." Alternatively, recommends that the proposed effective date of Code section 904(f) be deferred so as to exclude a loss arising by reason of a sale, liquidation or other disposition after Dec. 31, 1976, provided the loss reflects worthlessness of stock prior to such date and the transaction is effected on or before the date (including extensions) prescribed for filing the taxpayer's 1976 return.

John E. McDermott, Condert Brothers, New York, N.Y. (*statement*)

States that prior to the 1976 Act the law was unclear as to whether a corporation with a foreign source capital loss, in excess of foreign source capital gains, was required to deduct the foreign source capital loss from its foreign source ordinary income in the numerator of the limiting fraction in cases where the foreign source capital loss offsets U.S. course capital gains. Further states that the Internal Revenue Service is now advocating on audit that such a foreign source capital loss must be deducted from foreign source ordinary income. Requests Committee report to state that pre-1976 Act law on the point was unclear.

Recapture of Foreign Oil Related Losses (sec. 2(q)(5))

Cornelius Shields, Vice President of Sun Company, Inc., and H. Lawrence Fox, Counsel (*Sept. 8*)

Recommends that section 2(q)(5) of the bill be amended to provide that foreign oil-related losses sustained in a taxable year ending before Jan. 1, 1979, and which are incurred pursuant to a binding contract entered into on or before July 1, 1974, need not be recaptured in an amount exceeding 15 percent of such loss for the first four years after they become subject to recapture, and that they will become fully subject to recapture thereafter.

Foreign Taxes on Sec. 911 Exclusion (sec. 2(q)(8))

Robert L. Smith, President, Warren Bros. Co., Cambridge, Mass. (statement)

State that the 1976 Act amendments of Code section 911 are unfortunate, but effective, distincentives for American business to expand abroad. Recommends the 1976 Act amendments be repealed.

Sale of Assets by Possessions Corporations (sec. 2(q)(9))

Renato Beghe, Tax Section, New York State Bar Association (statement)

Approves of provisions in sec. 2(g) (9) relating to sale or exchange of assets by possessions corporations and recommends extension of the provision to sales by possession corporation of assets obtained in nonrecognition transfers from Puerto Rico corporations to which Code sec. 957(c) applies.

Nonresident Aliens Electing Joint Return Status (sec. 2(q)(13) and (14)

Renato Beghe, Tax Section, New York State Bar Association (statement)

Recommends that the changes made in sec. 2(q) (13) and (14) of the bill be amended to clarify in the statute that the administrative provisions of subtitle F apply to nonresident aliens electing to be treated as United States taxpayers (under Code sec. 6013(g)).

C. Amendments to Estate and Gift Tax Provisions (Section 3 of the bill)

Fresh Adjustment for Certain Preferred Stock (section 3(a)(1))

Donald C. Lubick, Deputy Assistant Secretary for Tax Policy (Sept. 8)

Recommends that section 3(a)(1) be amended to make it clear that in the event of a sale or exchange of section 306 stock issued to January 1, 1977, which is carryover basis property in the hands of the seller, the amount realized will be reduced by the adjusted basis of the stock on December 31, 1976 plus any "fresh start" adjustment. States that section 3(a)(1) as now drafted can be interpreted as technically denying a reduction from the amount realized unless the pre-1977 section 306 carryover basis stock was eligible for a "fresh start" adjustment, as where there was no appreciation in the value of the stock.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

States that this provision is less important than the hardships caused by the inability of 306 stock to qualify for section 303 redemption.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

States that in the case of section 306 stock issued before January 1, 1977, or before the enactment of the 1976 Act, affected parties relied upon the then existing law under which the stock would have lost its ordinary income taint upon the owner's death. Further states that consistent with this reliance, affected parties should be entitled to use the section 1023(c) and (e) adjustments first against ordinary income and then, to the extent not so used, against capital gain rather than only permitting these adjustments to reduce gain.

Suggests that the applicataion of proposed section 306(a)(3) should not turn upon whether an increase in basis is available under section 1023(h) and that the proposed language which would create the disparity treatment be eliminated.

Arthur S. Hoffman, Chairman, Committee on Financial and Estate Planning, Federal Tax Division, American Institute of Certified Public Accountants (Sept. 8)

Urges that the taint of all section 306 stock be removed at the death of the shareholder, or, alternatively, that the taint be removed from section 306 stock issued before 1977. Recommends that if the alternative is adopted, 306 stock issued after 1976 should be treated as follows:

1. its adjusted basis should be available to offset dividend income;

2. the period used to compute the "fresh start" adjustment should run only to the date of issuance of the preferred stock.

Robert R. Batt, Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa. (*statement*)

Opposes the enactment of section 3(a)(1) of the bill. Recommends that an offset equal to the fair market value of the stock on December 31, 1976, be allowed rather than a "fresh start" adjustment because the "fresh start" would not apply where the decedent's basis exceeded the fair market value on December 31, 1976.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (*statement*)

Supports adoption of section 3(a)(1) of the bill, but recommends that the adjustment to carryover basis property provided by Code section 1023 be available for section 306 stock.

Peat, Marwick & Mitchell, Inc., New York, N.Y. (*statement*)

Opposes section 3(a)(1) of the bill. Recommends that where section 306 stock has a fixed dividend and redemption price it be treated the same a marketable securities for purposes of the carryover basis rules.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Recommends that the apparent inconsistency between section 3(a)(1) of the bill and Code section 301(c) be clarified to describe how the addition to basis is to be used. Recommends further that there be a clarification of whether ordinary income on redemption of section 306 stock is to be determined with or without reference to the basis adjustments. Recommends further that there be a clarification as to whether the new basis adjustments apply to section 306 stock received in a reorganization in which it is exchanged for old section 306 stock issued prior to January 1, 1977, acquired from a decedent.

Byrle M. Abbin, Arthur Anderson & Co., Chicigo, Illinois (*statement*)

Notes that the proposed basis adjustment to section 306 stock will not be meaningful except when the stock is sold to a third person or where the shareholder's entire interest is redeemed, as basis is not an element in computing the taxable gain on redemption of this preferred stock, and recommends an amendment to section 301(c) to be consistent with the technical correction.

Brent M. Abel, San Francisco, Calif.; M. Bernard Aidinoff, New York, N.Y.; Edwin S. Cohen, Washington, D.C.; Hewitt A. Conway, New York, N.Y.; Peter L. Faber, Rochester, N.Y.; William M. Goldstein, Washington, D.C.; Richard J. Hiegel, New York, N.Y.; Gordon Henderson, New York, N.Y.; James O. Hewitt, San Diego, Calif.; Waller H. Horsley, Richmond, Va.; John B. Huffaker, Philadelphia, Pa.; Elliott Manning, New York, N.Y.; Harry K. Mansfield, Boston, Mass.; Donald Schapiro, New

York, N.Y.; Frederick A. Terry, Jr., New York, N.Y.; and Gordon M. Weber, San Francisco, Calif. (*statements*)

Oppose proposed technical correction. Feel that the "fresh start" averaging rule is arbitrary and discriminatory against closely-held corporations. Recommend that non-convertible fixed preferred stock outstanding on December 31, 1976, be given a "fresh start" basis equal to its value at the date of death as determined for purposes of estate tax valuation to equalize the treatment of stock of public and private corporations, or that the executor be able to allocate the basis of all assets received from the deceased among those assets sold to produce liquidity, thus reducing the current income taxes while increasing future income taxes.

Federal Tax Division, American Institute of Certified Public Accountants (*statement*)

Recommends amending Code section 306(c) (1) (C) to provide that 306 stock does not include stock which has its basis determined under section 1023 (carryover basis). Prefers disappearance of 306 taint at death but alternatively recommends: (1) The adjusted basis (including the "fresh start" adjustment should be available to offset dividend income reportable by the estate or heirs upon a sale or redemption; (2) The period used in computation under the special valuation method should run only to the date of issuance of section 306 stock.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson, Thacher & Bartlett, New York, N.Y. (*statement*)

Recommend amending Code section 306 to provide that the "amount realized" shall be reduced by the adjusted basis of section 306 stock after all adjustments to basis under Code section 1023 and provided that the amount of ordinary income otherwise recognized under Code section 306 be reduced by such adjusted basis before reducing the amount of capital gain income otherwise recognized under Code section 306.

Recommend that section 3(a) (1) of the bill be modified to provide that the "amount realized" upon the disposition of Section 306 stock is to be reduced by the adjusted basis of the stock on December 31, 1976 (provided the basis of such stock in the hands of the person disposing of it reflects the basis of such stock on December 31, 1976), whether or not an adjustment to basis under Code section 1023(h) is to be made.

Redemptions of Certain Preferred Stock To Pay Death Taxes (sec. 3(a)(2))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that section 3(a) (2) be amended to allow capital gains treatment for a redemption of section 306 stock in the hands of the heirs in order to pay death taxes and administration expenses.

Edwin S. Cohen, Covingon & Burling, Washington, D.C. (*Sept. 8*)

Opposes proposed technical correction and recommends that (1) section 306 stock issued prior to the decedent's death be eligible for redemption under section 303 (as would be the case for such stock if issued after his death); (2) section 306 stock issued prior to January 1, 1977, lose its section 306 taint upon death of the shareholder and be eligible for section 303 treatment; (3) capital gains treatment be available for redemptions of closely held stock under section 303 to pay not only estate taxes but also income taxes due on the redemptions; and (4) nonconvertible fixed preferred stock outstanding on December 31, 1976, be given a "fresh start" basis equal to its value at the date of death of the decedent.

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

Questions the necessity for section 3(a)(2) and suggests that Code section 303 should override section 306 just as it overrides section 302.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Opposes enactment of section 3(a)(2). Recommends that section 303 override Code section 306 in all instances, so that when 306 stock is redeemed under Code section 303, the 306 taint would be lost. As an alternative, suggests that disqualification under Code section 303 extend only to the amount which would be treated as a dividend under revised Code section 306 with the remainder being eligible for sale or exchange treatment under Code 303, or that all 306 stock issued before January 1, 1977, be excluded from the proposed amendment.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

Suggests that the effective date of section 3(a)(2) be modified to include only stock issued after December 31, 1976.

Arthur S. Hoffman, Chairman of the Committee on Financial and Estate Planning, Federal Tax Division, American Institute of Certified Public Accountants (Sept. 8)

Recommends that section 3(a)(2) of the bill be rewritten in such a way that 306 stock is clearly eligible for section 303 treatment.

Lewis M. Costello, Attorney, Winchester, Virginia (Sept. 8)

Supports the Treasury Department's recommendation to amend section (3)(a)(2) of the bill to allow capital gains treatment for a redemption of section 306 stock in the hands of the heirs in order to pay death taxes and administration expenses.

Byrle M. Abbin, Arthur Andersen & Co., Chicago, Illinois (statement)

Objects to proposed technical correction because it conflicts with Congressional intent, but feels that if adopted, it should only apply prospectively.

Brent M. Abel, San Francisco, Calif.; M. Bernard Aidinoff, New York, N.Y.; Edwin S. Cohen, Washington, D.C.; Hewitt A. Conway, New York, N.Y.; Peter L. Faber, Rochester, N.Y.; William M. Goldstein, Washington, D.C.; Richard J. Hiegel, New York, N.Y.; Gordon D. Hendersen, New York, N.Y.; James O. Hewitt, San Diego, Calif.; Waller H. Horsley, Richmond, Va.; John B. Huffaker, Philadelphia, Pa.; Elliott Manning, New York, N.Y.; Frederick A. Terry, Jr., New York, N.Y.; Harry K. Mansfield, *Boston, Mass.; Donald Shapiro, New York, N.Y.; and Gordon M. Weber, San Francisco, Calif.* (*statements*)

Oppose proposed technical correction and recommend (1) only preferred stock issued after January 1, 1977, be denied section 303 redeemability, and (2) 303 redemption be permitted for both death taxes and income taxes attributable to the redemption itself.

Mac Asbill, Jr., Sutherland, Asbill & Brennan, Washington, D.C. (*statement*)

Opposes technical correction because it conflicts with Congressional intent and because it would cause substantial hardships.

Charles C. Butt, President, H. E. Butt Grocery Company (*statement*)

Opposes proposed technical correction and recommends that Code section 306 be inapplicable to any stock redeemed under section 303.

Ernest S. Christian, Jr., Patton, Boggs & Blow, Washington, D.C. (*statement*)

Opposes proposed technical correction, and recommends that section 306 be inapplicable to redemptions of stock under section 303, and that 303 redemption be permitted for both death taxes and income taxes attributable to the redemption itself.

Sidney J. Hess, Jr., Aaron, Aaron, Schimberg & Hess, Chicago, Illinois (*statement*)

Opposes the proposed technical correction as inequitably retroactive and beyond the scope of a "technical" amendment. Believes if bill is enacted in its present form, section 3(a)(2) should be revised so that no part of the adjusted basis of section 306 stock at December 31, 1976 as increased by section 1023(h) will be subjected to tax.

Addis E. Hull, Jenner & Block, Chicago, Illinois (*statement*)

Opposes the proposed technical amendment as unfair and not in keeping with the legislative intent behind section 303, and proposes that certain preferred stock (section 306 stock) be permitted to be redeemed at capital gains under section 303.

Ralph B. Kelley, Gilbert, Segall & Young, New York, N.Y. (*statement*)

Opposes proposed technical correction as "nontechnical" and substantive. Believes that if Congress decides to make this significant change, section 306 stock outstanding on January 1, 1977 should be grandfathered to retain section 303 benefits.

Federal Tax Division, American Institute of Certified Public Accountants (*statement*)

Recommends that the proposed section be withdrawn and a substitute adopted which will declare the eligibility of section 306 stock for section 303 treatment.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson, Thacker & Bartlett, New York, N.Y. (*statement*)

Recommend modifying section 3(a)(2) of the bill to make section 306 stock eligible for 303 redemptions.

Ralph B. Kelley, Gilbert, Segall and Young, New York, N.Y. (statement)

Opposes the provisions of section 3(a) of the bill which would prevent Code section 303 from overriding section 306 and suggests grandfathering redemptions of section 306 stock outstanding on January 1, 1977.

Paul C. Wolman, Jr., Blades & Rosenfeld, P. A. Baltimore, Md. (statement)

States that if the historical purposes of Code section 303 is sound, there is no logical or rational reason for not applying the section if the redeemed security happens to be section 306 stock. Recommends that section 3(a)(2) of the bill not be enacted.

M. Michael Gill, Hillix, Brewer, Hoffhaus & Whittaker, Kansas City, Mo. (statement)

Opposes section 3(a)(2) of the bill and recommends that a capital gains redemption of section 306 stock be allowed in order to prevent liquidation of numerous closely-held business.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends permitting the redemption of section 306 stock at capital gains rates under Code section 303 to pay both death and income taxes.

Richard E. Heath, Hodgson, Russ, Andrews, Wood, & Goodyear, Buffalo, N.Y. (statement)

Recommends that preferred stock which would subject to treatment as dividend income (sec. 306) under H.R. 6715 be eligible for capital gains treatment in redemptions, etc., of stock in closely held business to pay death taxes (sec. 303). Also recommends that additional redemptions be eligible for capital gains treatment to cover the income taxes incurred in the redemptions to pay death taxes.

Peat, Marwick & Mitchell & Co. (statement)

Opposes section 3(a)(2) of the bill and recommends that section 306 stock be redeemable under section 303 of the Code.

Robert F. Spindell, Spindell, Kemp & Kimmons, Chicago, Illinois (statement)

States that the legislative intent behind Code section 306 does not exist when Section 306 stock is redeemed for Code section 303 purposes and recommends that no tax consequences should arise from the issue date of preferred stock (i.e., either before or after date of death).

Richard W. Snowdon, Bird and Tansill, Washington, D.C. (statement)

Opposes the enactment of section 3(a)(2) of the bill and recommends that legislation exactly the opposite of section 3(a)(2) be enacted.

Jack S. Levin and Edward J. Roche, Jr., Kirkland & Ellis, Chicago, Ill. (statement)

Urge that section 3(a)(2) of the bill be deleted and that it be replaced with a provision clarifying present law so that Code section 303 will override Code section 306 in all events.

Deduction or Adjustment to Basis for Estate Tax on Appreciation (sec. 3(b))

Arley J. Wilson, Chairman, Probate, Property and Trust Law Committee Iowa State Bar Association (Sept. 8)

Believes the carryover basis provisions have made the equitable distribution of property in an estate virtually impossible unless all property is distributed on a fractional basis. States that because of the adjustment to carryover basis attributable to estate and inheritance taxes paid on appreciation in value, it is physically impossible to determine in the early stages of administration of an estate the income tax result of the distribution of property. Further states that taxpayers will be unable to file accurate tax returns and tax advisers will be unable to make intelligent recommendations.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Believes that the policy underlying section 3(b) is incorrect and urges the section be deleted.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

States that the proposed change coordinates the Code section 691(c) deduction and the capital gain deduction in a satisfactory manner. Notes, however, that the proposed change fails to reduce the amount of the gain itself to reflect the Code section 691(c) deduction, possibly resulting in a minimum tax due to an overstated gain. Suggests as an alternative the elimination of Code section 1023(b)(2)(A), which excludes section 691 income from carryover basis treatment, and the Code section 691(c) deduction, thus making a basis adjustment for such income available under Code section 1023.

Earl Hall, C.P.A., Lewiston, Idaho (statement)

Feels that this provision has major tax ramifications for those taxpayers who have opted to sell property rather than holding it until death, and as such, it is a change which should not be buried in a Technical Corrections bill.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Opposes section 3(b) of the bill and recommends that the deduction for income in respect of a decedent should continue to be allowed as an itemized deduction without limitation.

Fresh Start Adjustment for Certain Carryover Basis Property (sec. 3(c)(1))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the bill's proposed formula for determining the "fresh start" basis of tangible property be limited to tangible personal property not used in a trade or business. Also recommends that estate tax value (rather than date of death value only) be the starting point for the formula.

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

Proposes changing section 3(c)(1) so that the discount factor for increases in value of tangible personal property and other assets, excluding marketable securities, subsequent to December 31, 1976 would be tied to the social security cost of living adjustments presently embodied in Code section 415(d) rather than adopting an arbitrary 8 percent discount factor based on a presumed inflation rate.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, the American College of Probate Counsel (Sept. 8)

Recommends as an alternative to section 3(c)(1) that when cost and date of acquisition of tangible personal property are unknown, an election be allowed to use zero cost basis as of the decedent's birth and then applying the present Code section 1023(h)(2)(C) fractional adjustment formula.

Ralph E. Mirarchi, Bluestein, Prusky & Susman, Philadelphia, Pa. (Sept. 8)

Opposes proposed technical correction because of its complexity, and recommends repeal of the "fresh start" adjustment provision because of its impracticality.

Edwin S. Cohen, Covington & Burling, Washington, D.C. (Sept. 8)

Recommends that "fresh start" basis not be reduced with passage of time when real value of the property is undiminished, and that an executor selling part of carryover basis property to pay estate taxes be permitted to apply the entire basis adjustment for estate taxes to the disposed of property, so as to increase the income tax basis of the property and thus eliminate or reduce income tax liability on the sale.

Suggests if section 3(c)(1) is to be retained, it can be improved by eliminating the words "without regard to section 2032" in line 15 on page 53 so as to avoid having to value closely held stock as of date of death when alternate valuation is elected.

Further suggests deleting the restriction to tangible personal property so that the provision will apply to any carryover basis property other than marketable securities.

Points out that section 3(c)(1) does not refer to the alternate valuation, which means that a separate valuation of tangibles, using date of death values would be required solely to determine basis. Notes that there may not be a procedure by which the Internal Revenue Service and the estate could determine the date of death value of the tangibles.

Arley J. Wilson, Chairman, Probate, Property and Trust Law Committee, Iowa State Bar Association (Sept. 8)

Believes the "fresh start" adjustment for carryover basis property with an unknown cost (section 3(c)(1) of the bill) is not acceptable administratively. For example, states that nobody keeps track of the date of birth of a hog. Explains that discounting present value at 8 percent a year for each year after 1976 will at the end of 12½ years eliminate all basis. Questions this treatment for assets which have declined in value.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Recommends allowing use of the alternate valuation date to determine minimum basis for tangible personal property. Further recommends redrafting the "nth power" concept in such a manner that its meaning will be clear to any interested reader.

Kenneth G. Hance, Jr., President, and Alan J. B. Aronsohn, Tax Counsel, National Realty Committee (*Sept. 8*)

Oppose proposed technical correction because it is unfair to taxpayers holding property which does not appreciate ratably, and recommend optional use by taxpayer of actual fair market value on cutoff date for "fresh start." Also recommend that the effective date for the carryover basis rules be changed from December 31, 1976, to not earlier than December 31, 1978.

John J. Szymanski, Member, Tax Legislative Subcommittee, International Council of Shopping Centers (*Sept. 8*)

Opposes "fresh start" formula of 1976 Act and technical correction because it is unfair to taxpayers holding property which does not appreciate ratably over the years. Recommends that carryover basis provisions be amended to permit assets owned by decedent prior to 1977 to be governed by the old law. In the alternative, recommends optional use by taxpayer of actual fair market value on December 31, 1976, for "fresh start."

American Institute of Certified Public Accountants (*statement*)

Recommends broadening of the proposed technical correction, including (1) adoption of a liberal standard of proof required by heirs or executors; and (2) minimum basis be determined by assuming that post-1976 appreciation follows a 6 percent rate, rather than an 8 percent rate.

Byrle M. Abbin, Arthur Anderson & Co.. Chicago, Ill. (*statement*)

Contends that 8 percent is an unrealistically high discount rate because most tangible property does not appreciate at that rate, and that the statute should be simplified by stating the interest rate in annual terms and noting that it is computed on a monthly basis.

National Association of Realtors (*statement*)

Opposes section 3(c)(1) of the bill and recommends that taxpayers be permitted to present independent appraisals of the "fresh start" value of property (other than marketable securities) because such property does not appreciate ratably and it is unfair to discriminate in favor of marketable securities.

Bradford Wellman. Forest Industries Committee on Timber Valuation and Taxation (*statement*)

Supports section 3(c)(1) of the bill and recommends that the minimum basis rules be extended to real property, especially real property held as farms and timberlands, because inadequate records are also frequently a problem with these kinds of real property.

Thomas B. Denegre, Jr., Vice President & Trust Officer, Chesapeake National Bank, Kilmarnock, Va. (statement)

Supports section 3(c)(1) of the bill and other proposed technical corrections to the carryover basis rules as these changes may reduce the additional administrative burdens placed on the trust departments of small banks by the new carryover basis rules.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Opposes section 3(c)(1) of the bill as too restricted in application, and recommends use of the appraised December 31, 1976 value when the executor cannot determine the decedent's basis or acquisition date, and valuation of collections (e.g. stamps, coins, etc.) as a unit, determining the acquisition date on some formula basis.

Robert D. Shapiro, Industrial Soap Company, St. Louis, Mo. (statement)

Recommends that the assets received from a decedent take a basis increased by funeral expenses, administration expenses, and estate and inheritance taxes, which are the same items as those listed in Code section 303.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson Thacher & Bartlett, New York, N.Y. (statement)

Recommend modifying section 3(c)(1)(A) of the bill to specify that the minimum basis adjustment is an alternative "fresh start" adjustment and is not to be made before application of the adjustment under Code Section 1023(h) (1) or (2), as the words "the adjusted basis of such property immediately before the death of the decedent shall be treated as being not less than" in the bill might indicate.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that section 3(c)(1) of the bill be extended to all property other than marketable bonds and securities.

Treatment of Indebtedness Against Carryover Basis Property (sec. 3(c)(2))

Arley J. Wilson, Chairman, Probate, Property & Trust Law Committee, Iowa State Bar Association (Sept. 8)

Questions what the result of distribution of property with a negative basis (mortgage larger than carryover basis) would be, and suggests that distribution of such property would probably trigger an immediate taxable event in the estate of the decedent.

John H. Butala, Jr., Co-Chairman, Tax Committee, Trust Division, American Bankers Association (Sept. 8)

Recommends that section 3(c)(2) be modified to state that a nonrecourse obligation is a "part" of the fair market value of any property and would be reflected in both the numerator and denominator of the fraction used in making the basis adjustments.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson Thacher & Bartlett, New York, N.Y. (*statement*)

Recommend that Code section 1023 be amended to provide that the adjustments to basis under section 1023 (c), (d), (e), and (h) are to be computed by reducing the adjusted basis by any mortgage on, or indebtedness in respect of, property if the property has been included in the gross estate diminished by such mortgage or indebtedness. Further recommend that Congress should clarify whether a change of ownership from decedent to his estate or beneficiaries or a distribution from the executor to a beneficiary of carryover basis property constitutes a disposition for income tax purposes if liabilities with respect to such property exceeded its basis at the time of death or of distribution.

Only One Fresh Start Adjustment for Carryover Basis Property (sec. 3(c)(3))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that the bill's provision stating that only one "fresh start" basis adjustment shall be made with respect to any carryover basis property be clarified by substituting the word "change" for "increase" in section 3(c) (3) of the bill. States the change will make it clear that the "fresh start" adjustment is to be made only at the death of the first decedent owning carryover basis property.

Arley J. Wilson, Chairman, Probate, Property & Trust Law Committee, Iowa State Bar Association (*Sept. 8*)

Believes that the wording of section 3(c) (3) of the bill is ambiguous and might be read to imply that carryover basis would be reduced to zero and not follow through the second estate, rather than being read to mean that there is only one carryover basis in any sequence of events.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

States that section 3(c) (3) of the bill is subject to the interpretation that its operation is limited to denying an increase in the fresh start basis in the second or later estate. Recommends that section 3(c) (3) be amended to eliminate any interpretation that, where a subsequent fresh start adjustment would produce a lower fresh start basis, it would be allowed.

Adjustment to Carryover Basis Property for State Estate Taxes (sec. 3(c)(5))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that the bill's clarification of the circumstances under which the payment of state estate taxes will result in an adjustment to the basis of carryover basis property be modified by deleting the words "by the estate" from proposed Code section 1023(f) (3) (8). States this modification will permit an adjustment to basis where the state estate tax liability has been discharged by an entity other than the estate, e.g., a funded inter vivos trust created by the decedent

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

States that the proposed solution of section 3(c)(5) is inequitable because, by requiring the state death tax adjustment to be made after the adjustment for federal estate taxes, the state death tax adjustment is reduced even though the state death tax is imposed on the same appreciation element. Believes that both adjustments should relate to the full appreciation element. Further, states that section 3(c)(5) does not solve the problem stemming from the requirement that state death taxes be paid by the estate, which would probably disqualify state death taxes apportioned against persons taking outside the will.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Supports the separate basis adjustment computations for the federal estate tax and state estate taxes; suggests, however, that the definition of carryover basis property should be modified to include property outside of the federal gross estate, so that when property subjected to state estate taxes is not included in the federal gross estate it will still be entitled to a basis adjustment.

Opposes computation of the state estate tax basis adjustment after adjustment for federal estate taxes on net appreciation, and recommends that the computation of both state and federal estate tax basis adjustments be made on total net appreciation.

Suggests there is ambiguity about whether state or federal values should be used in the computation of the basis adjustment for state estate taxes in proposed Code section 1023(c)(2) because of the definition of "fair market value" in Code section 1023(g)(1). Recommends that state values be used. Further recommends that the Committee report explain how "property which is subject to the state estate taxes" is to be determined and how the proposed Code section 1023(c)(2) basis increase is to be determined when estate taxes are paid to more than one state.

Robert R. Batt, Ballard, Spah, Andrews & Ingersoll, Philadelphia, Pa. (*statement*)

Opposes section 3(c)(5) of the bill because, in those states with both inheritance and "slack" estate taxes, the base for the inheritance and estate taxes is not the same. States that better solution would be to compute the federal estate and state "slack" taxes on the same formula, and use a separate formula for state inheritance taxes. Believes clarification is needed as to how basis adjustments should be allocated when there is a marital or charitable deduction, as it is now unclear whether it should be allocated pro-rata on all property or on that property not qualifying for such deduction.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Supports section 3(c)(5) of the bill, but recommends it be expanded to include adjustments to basis in situations where an *inter vivos* trustee is directed to pay the Federal estate and State death taxes on the death of the settler.

Byrle M. Abbin, Arthur Anderson & Co., Chicago, Ill. (*statement*)

Notes that the proposed change may be more precise but it will add substantial complexity which appears to be unwarranted by the slight change in carryover basis. Recommends using the same denominator for computation of the appreciation attributable to both Federal and State estate taxes.

Clarification of Increase in Basis for Certain State Succession Taxes (sec. 3(c)(6))

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Recommends that the definition of "state estate taxes" in Code section 1023(f)(3) be amended so that the source of payment of the state tax will be irrelevant, as in the source of payment of the federal estate tax in determining the basis increase for the federal estate tax. States this change would allow the elimination of Code section 1023(e).

Coordination of Carryover Basis Adjustments (sec. 3(c)(7))

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

Opposes the proposed change because the minimal easing of the fiduciary's task would be at the cost of minimizing the adjustments available for loss purposes.

Byrle M. Abbin, Arthur Andersen & Co., Chicago, Ill. (*statement*)

Believes the proposed change would simplify estate administration because only one computation of the death tax add-on is required, however, the estate and heirs will still be unable to determine their tax basis until there is a disposition of the property. States that the proposed changes will result in inequitable distinctions between persons acquiring assets before and after December 31, 1976, and does not believe that the simplicity warrants this lack of equity.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson Thacher & Bartlett, New York, N.Y. (*statement*)

Recommend modifying section 3(c)(7) of the bill to provide for the "fresh start" adjustment to apply "for purposes of determining gain, loss and applying this section." (Adds the word "loss" to the Committee version of the bill.")

Clarification of the Rules Relating to Special Use Valuation (sec. 3(d)(1))

Arley J. Wilson, Chairman, Probate, Property & Trust Law Committee, Iowa State Bar Association (*Sept. 8*)

Recommends that the "material participation" test of Code section 2023A(b)(1)(C)(ii) be dropped as a requirement for special use valuation. States that this "material participation" requirement defeats the intent of Congress to enable families to retain family farms and discriminates against women and senior farmers.

James Hutchinson, President, Jack A. Kirby, Special Counsel, Eldon H. Greenwood, Chairman, Legislative Committee, and Robert Walters, American Society of Farm Managers and Rural Appraisers, Inc. (*Sept. 8*)

Recommend that "material participation in Code section 2032A (e)(6) be defined, for special use valuation purposes, to permit management of farms by professional farm managers or tenants who lease the farms from the owners.

Jack Arthur Kirby, Special Counsel, American Society of Farm Managers and Rural Appraisers, Rosemont, Pa. (*statement*)

Urges the adoption of a workable definition of the material participation requirement and recommends that farmers be able to receive full benefits under the social security system while preserving the right of their estates to elect special use valuation.

Robert K. Ryan, Ryan, Hartzel, Ryan & Bock, Frankfort, Indiana (*statement*)

States that the requirements of the 1976 Act regarding special use valuation of farms are almost impossible to meet.

Joint Statement of National Livestock Tax Committee, American National Cattlemen's Association, National Livestock Feeders Association, and National Wool Growers Association

Endorses proposed technical correction in section 3(d)(1) of the bill.

Edwin W. Sale, Kankakee, Illinois (*statement*)

Believes that the "material participation" provision defeats its own purpose by making it impossible for an owner of a farm of 1,000 acres or less to pass the property to his or her heirs without necessitating the breaking up of the farm by the heirs in order to pay estate taxes. States the attempt to limit the persons eligible for the law's benefits and the attempt to tax capital gains, may well have created the means for the disintegration of the Midwest farm economy.

Mr. and Mrs. Lloyd Royal, Springfield, Nebraska (*statement*)

Support special use valuation for family farms, but do not believe Congressional intent was followed when the "material participation" requirement was interpreted by Internal Revenue Service Pamphlet No. 553 as meaning the decedent, or a qualified heir, must have been subject to self employment tax for five out of eight years preceding death.

The American Farm Bureau Federation (*statement*)

Notes that the special use valuation provisions have created some difficulty because farmers and ranchers appear reluctant to allow the Government to hold liens on their property as provided in the 1976 Act. States that the numerous rules and qualifications associated with the special use valuation may limit the number of those who will avail themselves of the proposed section.

Use of Special Use Valuation Property To Satisfy Pecuniary Bequest (sec. 3(d)(2))

Joint Statement of National Livestock Tax Commission, American National Cattlemen's Association, National Livestock Feeders Association, and National Wool Growers Association

Endorses proposed technical correction in section 3(d)(2) of the bill.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson, Thacher & Bartlett, New York, N.Y. (statement)

Recommend that Code section 1040 be amended to provide that for purposes of the section the fair market value of appreciated carryover basis property is to be reduced by any mortgage on, or indebtedness with respect to, such property whenever the property has been included in the gross estate diminished by such mortgage or indebtedness.

Recommend that section 3(d)(2) of the bill be amended to specify whether Code section 306 or Code section 1040 controls when appreciated carryover basis section 306 stock is used to satisfy a pecuniary bequest.

Gain Recognized on Use of Special Use Valuation Property To Satisfy Pecuniary Bequest (sec. 3(d)(3))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the bill's clarification to the effect that where an estate or trust satisfies a pecuniary bequest with appreciated property subject to special use valuation the gain recognized includes only post mortem appreciation, be modified to give taxpayers the option to calculate the Code section 1040 gain by applying either "highest and best use" values or special use values on the revelant valuation dates.

Joint Statement of National Livestock Tax Commission, American National Cattlemen's Association, National Livestock Feeders Association, and National Wool Growers Association

Endorses proposed technical correction in section 3(d)(3) of the bill.

Thomas J. McGrath and Jonathan G. Blattmachr, Simpson, Thacher & Bartlett, New York, N.Y. (statement)

Recommend that section 3(d)(3) of the bill be amended to specify which of Code sections 1245 and 1250 (each of which prescribes that "gain shall be recognized notwithstanding any other provision of this subtitle"), on the one hand, and section 1040 (which prescribes that the executor who satisfies a pecuniary bequest with appreciated carryover basis property shall recognize gain only to the extent that the fair market value of the property exceeds its estate tax value), on the other hand, controls when appreciated carryover basis section 1245 property is used to satisfy a pecuniary bequest.

Treatment of Community Property Under Special Use Valuation Provision (sec. 3(d)(4))

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Opposes section 3(d)(4) and instead recommends that only the decedent's half of the community property be taken into account for purposes of Code section 2032A, including qualification, basis recapture and all other characteristics. Further recommends that the Code section 1023(d) step up in basis to $60,000 should only apply to decedent's half of the community property and not to the surviving spouse's half.

Joint Statement of National Livestock Tax Commission, American National Cattlemen's Association, National Livestock Feeders Association, and National Wool Growers Association

Endorse proposed technical correction in section 3(d)(4) of the bill.

Bond To Relieve Qualified Heir of Personal Liability for Recapture of Tax Where Special Use Valuation Is Utilized (sec. 3(d)(3))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the provision which would enable a qualified heir to be discharged from personal liability for payment of the Code section 2032A recapture tax upon the filing of a bond in a certain amount be extended to all persons party to the agreement required by Code section 2032A(d)(2).

Arley J. Wilson, Chairman, Probate, Property & Trust Law Committee, Iowa State Bar Association (Sept. 8)

Believes that the bonding provisions of section 3(d)(5) are not practical. States that the cost of the bond would exceed the benefits from the postponement of the tax. Recommends that Congress determine the amount of the bond required.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

States that section 3(d)(5) does not go far enough. Suggests as an alternative an amendment to Code section 2032A(d)(2) allowing a testator or settlor to authorize his fiduciary to waive the consent requirements for the section 2032A election and thereby make all qualified heirs liable for the recapture tax to the extent of their shares of the estate unless they elected to post bond.

Joint Statement of National Livestock Tax Commission, American National Cattlemen's Association, National Livestock Feeders Association, and National Wood Growers Association

Endorses proposed technical correction in section 3(d)(5) of the bill.

Security Where Extended Payment Provisions Are Elected (sec. 3(e))

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Fears that the maximum amount of security provided by section 3(e) of the bill will become the normal amount requested and suggests that the maximum amount be reduced to reflect interest for only the first two years of the deferral period.

Transfer Within Three Years of Death (sec. 3(f))

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Recommends that the words "with respect to" life insurance in section 3(f) of the bill be amended to clarify whether or not they are intended to cover the payment of premiums on a previously transferred policy. Suggests that with the unification of the estate and gift taxes, Code section 2035(a) and (b) could be eliminated except for life insurance, which could be covered by Code section 2042.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

Notes that the retention of the three-year rule of Code section 2035(a) seems inconsistent with the unification of the estate and gift taxes. Suggests section 3(f) be modified so that gifts in excess of $3,000 will be included in the gross estate only to the extent the value at death exceeds $3,000. Further suggests the exclusion of $3,000 of a split gift of up to $6,000 where a gift tax return and spousal consent are required. Believes that the proposed treatment of life insurance is unfair and suggests that at least $3,000 of the proceeds should be excludible from the insured's gross estate even if the policy were transferred within three years before death. Urges that any changes made to Code section 2035 only apply to transfers made after April 28, 1977, the date of introduction of H.R. 6715.

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that Code sections 2035(a) (relating to inclusion in the gross estate of transfers made within 3 years of death) and (b) (the exceptions to that rule) be repealed and that subsection (c) be redesignated subsection (a), so that section 2035 would require the inclusion in the gross estate of any gift tax paid on taxable gifts made during three years before the decedent's death. Further recommends that Code section 2036 be amended to include in the gross estate of the transferor transfers within three years of death of shares of stock in which the transferor retained voting rights, and that Code section 2042 be amended to include in the gross estate of the transferor any transfer with respect to a life insurance policy made within three years of the transferor's death.

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

Notes with respect to the life insurance policy exclusion of section 3(f) that, according to the Internal Revenue Service, an employee covered under a group insurance plan receives income each year under the plan due to the economic benefit he receives, will be making annual gifts each year if he assigns his rights under the plan to his spouse or other third party. Notes further that this "deemed" annual gift may be treated as a transfer with respect to life insurance so that it would not be possible to keep the proceeds from the policy out of the gross estate of a deceased employee. Questions whether this is the intended result.

Ralph E. Mirarchi, Bluestein, Prusky & Susman, Philadelphia, Pa. (Sept. 8)

Recommends (1) the exclusion of split-gifts of up to $6,000 from the gross estate under Code section 2035, by clarification of the cross-reference to Code section 6019; and (2) either elimination of the proposed exception from the exclusionary rule for a gift of a life insurance policy or deferral of the effective date of such exception to a time not earlier than April 28, 1977.

Association for Advance Life Underwriting and the National Association of Life Underwriters (statement)

Fears the proposed amendment may reach beyond its intended meaning. Recommends that only transfers of life insurance policies within three years of the death of the insured be included in his or her gross estate. Recommends gifts of premium payments valued at less than $3,000 annually should be excluded from the estate under Code section 2035(b) by amending subsection (b)(2) to read: "Paragraph (2) shall not apply to any gift of a life insurance policy."

Max E. Blumenthal, Frank, Bernstein, Conaway & Goldman, Baltimore, Md. (statement)

Opposes proposed technical correction as unfair and recommends the effective date of the amendment to apply only to transfers made after April 28, 1977.

William J. Daniel, Fox, Rothschild, O'Brien & Frankel, Philadelphia, Pa. (statement)

Recommends expanding section 3(f), which would exclude from the gross estate gifts of under $3,000 made within three years of death for which no gift tax return is required, to include split-gifts of $6,000, which are not taxable though a gift tax return must be filed.

H. Stewart Dunn, Jr., Ivins, Phillips & Barker, Washington, D.C. (statement)

Recommends that only transfers of life insurance policies within three years of the death of the insured be included in his or her gross estate. Recommends that gifts of payment of premiums aggregating less than $3,000 a year should not pull the proceeds of the insurance policy into the estate. Recommends amending the last sentence of section 2035(b)(2) to read "Paragraph (2) shall not apply with respect to the gift of a life insurance policy."

Converse Murdoch, Murdoch & Walsh, Wilmington, Del. (*statement*)

Opposes proposed technical correction as an attempt to retroactively amend the statute. Believes that present statute excludes the entirety of any gift which, when made, was valued at less than $3,000. States that if section 3(f) is enacted, the effective date should be some date after the enactment of the bill.

Gilbert J. Pedersen, Smith, Pedersen & Smith, Buffalo, N.Y. (*statement*)

Opposes proposed technical correction because section 3(f) would include in a decedent's gross estate the value of gfts made within three years of death for which gift tax returns were filed but on which no tax was paid because the gift was less than $6,000 and spousal gift-splitting was elected. States 3(f) is contrary to both the House and Conference Committee Reports because it changes the annual exclusion.

Jeffry L. Weiler, Benesch, Friedlander, Coplan & Aronoff, Cleveland, Ohio (*statement*)

Believes that section 3(f) as written could be read in such a way that it would be impossible to keep the proceeds of a group life insurance or a split dollar contract out of the gross estate of a decedent. Recommends amending section 3(f) to provide that the insurance provision "shall not apply to any transfer with respect to an insurance policy other than the rights of an employee qualifying as group insurance under Internal Revenue Code Section 79 and/or rights of an employee undes a split dollar insurance contract."

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Recommends clarification of the scope of section 3(f) of the bill. States it is unclear whether section 3(f) is designed to resurrect the "payment of premiums" test for inclusion of life insurance in the estate of the decedent.

The American Farm Bureau Federation (*statement*)

Recommends that the appraisal made in the year of the gift should be allowed to stand if the gift is subsequently brought into the estate because of the three year rule.

Co-Ordination of Gift Tax Exclusion and Estate Tax Marital Deduction (Sec. 3(g)(1))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends amending section 3(g)(1) to conform with the Treasury's recommendation made under section 3(f).

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

Supports section 3(g)(1) and suggests that it be extended to situations where a marital deduction gift is included in the donor's estate as a transfer under Code sections 2036–2038, 2040 or 2042.

Co-Ordination of Gift Tax Exclusion and Estate Tax Marital Deduction (sec. 3(g)(2))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Suggests deleting section 3(g)(2) from the bill and inserting in Code section 2056(c)(1)(B)(ii) after the words "percent of" the words "the excess of the value of such gifts over the section 2503(b) amount, if any, allowable with respect to such gift."

Split Gifts Made Within Three Years of Death (sec. 3(h))

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Criticizes section 3(h) because it does not provide consistent treatment for gifts made by couples in community property states and gifts made by couples using the split gift provisions.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

Believes that section 3(h) of the bill should also apply to gift tax transfers of the nondonor spouse occuring after the death of the donor spouse.

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Points out that if Treasury's recommendation concerning section 3(f) of the bill (Code section 2035) is followed, section 3(h) on split gifts made within three years of death will only apply to transfers within three years of death of shares of stock with voting rights retained by the transferor or transfers with respect to a life insurance policy.

American Institute of Certified Public Accountants (statement)

Approves proposed technical correction but feels that the bill should also reverse the transactions tax consequences for gift taxes. Recommends: (1) the attained level of taxable gifts of the surviving spouse should be reduced for the split gifts subsequently included in the decedent's estate and the consenting spouse's unified credit should be restored, as if he or she had never consented to the gift; and (2) either the spouse ought to be able to file a claim for refund of the excess taxes paid on the split-gift or, in addition to the recommended reduction in taxable gifts and refund of unified credit, a credit should be given for excess gift taxes paid.

Inclusion in Gross Estate of Stock Transferred by the Decedent Where the Decedent Retained Voting Rights (sec. 3(i))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that (1) section 3(i) be amended so that it will apply to retention of voting rights "in the transferred stock of" a controlled corporation rather than "with respect to" a controlled corporation; (2) the Secretary be granted authority to promulgate regulations regarding the application of the attribution rules of Code section 318 to proposed Code section 2036(b)(2) in a manner consistent with the purposes of that section; and (3) proposed Code section 2036(b)(3) be amended in a manner consistent with the Treasury's recommendations regarding Code section 2035.

Professor William J. Brown, University of Pittsburgh, and Dennis Sabourin, Research Assistant (Sept. 8)

Opposes section 3(i) and recommends that no corporate control test be added to Code section 2036(a). Believes any direct or indirect retention of voting powers by transferor in transferred stock should render such shares includible in transferor's gross estate without reference to whether he held control of the corporation. Recommends that Code section 2036(a)(2) be expanded to apply to stock transfers. Further recommends that stock transferred without retained voting rights should be included in the estate of a transferor who retained control over the corporation.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

States section 3(i) is an improvement over present law, but that it goes further than it needs to because it does not limit the proscribed retention of voting rights to the stock actually transferred, and because of the vagueness of the concept of indirect retention of voting rights. Recommends: (1) inserting the words "in the transferred stock" after the phrase "retention of voting rights" in proposed Code section 2036 (b)(1); (2) elimination of the concept of indirect voting rights or specifically limiting the phrase to a direct acquisition of stock by way of purchase following the transfer.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

Suggests that the Committee report contain examples of the sort of indirect retention of voting rights that section 3(i) of the bill is intended to cover.

Jaques T. Schlenger, Venable, Baetjer & Howard, Baltimore, Maryland (Sept. 8)

Suggests that section 3(i) of the bill be modified or deleted. Proposes a modification which would require inclusion of stock transferred by the decedent only where the decedent's retention of voting rights (without application of the constructive ownership rules) exceeds a *de minimis* amount, such as 5 or 10 percent.

American Institute of Certified Public Accountants (statement)

Believes the proposed change has a needlessly broad reach. Recommends that transferred stock in which the decedent retained voting rights be included in the gross estate only where the decedent possessed 20 percent of the voting control of the corporation, but if no voting rights were retained in the transferred shares, the donor must have retained more than 50 percent of all voting stock in the corporation in order to require inclusion of the transferred shares in the donor's estate. States these tests will cull out (1) the corporations to which the proposed changes should apply and (2) the specific stock which should be included in the donor's gross estate.

Sidney J. Hess, Jr., Aaron, Aaron, Schimberg & Hess, Chicago, Illinois (statement)

States that section 3(i) appears to do more than was intended. Recommends amending Code section 2036(b)(1) to provide that direct or indirect retention of voting rights in transferred stock of a controlled corporation shall be considered a retention of the enjoyment of transferred property. Suggests that if section 3(i) is intended to prevent a controlling person from making a gift of stock in the controlled corporation which could be excluded from his estate for Federal estate tax purposes, the change is inconsistent with the Code before and after the 1976 Act. Recommends that if 3(i) is retained. it should not apply to transfers before the introduction of the bill.

Paul C. Wolman, Jr., Blades & Rosenfeld, P.A., Baltimore, Md. (statement)

States that H.R. 6715 fails to correct the two problems contained in section 2036 of the 1976 Act: (1) The provision went beyond the scope of the *Byrum* case by requiring the inclusion in the estate of the value of any stock in which the decedent retained voting rights regardless of whether or not the retention of the voting rights enabled the decedent to retain voting control of the corporation, and (2) in defining the retention of voting rights, the amending provision referred not to transferred stock but to retained stock. Recommends that the definition of controlled corporation be refined to include effective voting control by holdings of under 20 percent of voting stock and to exclude holdings in excess of 20 percent of voting stock which do not afford effective voting control. Recommends further that the language of the proposed paragraph (1) of subsection (b) should be amended to restrict its application to retention of voting rights in transferred stock.

Converse Murdoch, Murdoch & Walsh, Wilmington, Delaware (statement)

Endorses the proposed technical amendment, but recommends consideration of whether retention of limited or contingent voting rights of many types of stock which do not ordinarily vote on corporate affairs should cause the inclusion of such stock in decedent's estate.

Donovan, Leisure, Newton & Irvine, New York, N.Y. (statement)

Opposes proposed technical correction and recommends that the value of stock transferred without the retention of voting rights not be included in the transferor's gross estate merely because he or she retains voting rights in the nontransferred stock.

Richard E. Heath, Hodgson, Russ, Andrews, Wood & Goodyear, Buffalo, New York (statement)

Recommends clarifying language changes with respect to the provision for inclusion of stock in the gross estate where the decedent had retained voting rights.

Jay W. Glasmann, Ivins, Phillips & Barker, Washington, D.C. (statement)

Recommends that the term "indirect retention" of voting control be specifically defined not to include transfers to a spouse or other relative as trustee, since interests of beneficiaries are often best served through family member trustees, and that the effective date of the amendments be set after the date of enactment of the Technical Corrections bill.

Theodore W. Hirsh, Sussman & Hirsh, P.A., Baltimore, Md. (statement)

Recommends changing "retained" to "transferred" in section 2036 (b) (1), to refer to retained voting rights in transferred stock.

Roger G. Lyle, C.P.A., Avery, Olson, Christie, Lyle, Davenport, Washington (statement)

Opposes proposed technical correction because it would discourage division of small businesses with potential heirs by placing an estate tax burden on those who attempt to share ownership but not management control of the business by creating and giving away a class of nonvoting stock.

Allan B. Muchin, Katten, Muchin, Gitles, Zavis, Pearl & Galler, Chicago, Illinois (statement)

Opposes proposed section 3(i) because the literal wording would include in the gross estate of a transferor the value of stock given a son, daughter or spouse, in which no voting rights were retained, where the total of voting rights in that transferred stock and the stock retained by the donor exceeded 20%. Recommends modifying Code section 2036(b) (1) to say that retention of voting rights in transferred stock shall be considered retention of the transferred property.

William J. Daniel, Fox, Rothschild, O'Brien & Frankel, Philadelphia, Pa. (statement)

Recommends amending section 2036(a) (1) by substituting the word "transferred" for the word "retained."

Fractional Interest Rule for Certain Joint Tenancies (sec. 3(k) (2))

Mary Moers Wenig, St. John's University, New York (Sept. 8)

Opposes section 3(k) (2) and recommends the complete exclusion from gift tax of all transfers of property from one spouse into the joint name of both spouses, and the application of the new fractional interest rule to all interests held jointly by spouses.

William C. Golden, Chairman, Committee on Federal Taxation Chicago Bar Association (statement)

Recommends that section 3(k) (2) of the bill be amended to allow an election without any restriction as to the year of exercise and that the 1979 cut-off be deleted.

Orphan's Exclusion (sec. 3(1))

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Recommends expansion of section 3(1) to allow orphan's deduction shares to be held in the same "pot" trust with the share of older children for which the orphan's deduction is not available.

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that section 3(l)(1) be deleted from the bill and the Secretary be granted specific authority to promulgate regulations regarding the type of trust to which property may pass and qualify for the orphan's deduction.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Finds section 3(l) of the bill helpful, but suggests that Code section 2057(c) be modified so that a trust which is not a "qualified minors" trust could qualify for the section 2057 deduction where the orphan is given a general testamentary power of appointment and the trustee has a power to accumulate income. Recommends that the ascertainable standard requirement for disproportionate distributions be eliminated and that a trustee have broad discretion in making payment for the stated purposes.

Charles W. Giraud, Butler, Binion, Rice, Cook & Knapp, Houston, Texas (*Sept. 8*)

Opposes proposed technical amendment and recommends repeal of the orphan's exclusion. In the alternative, recommends that Code section 2057 be amended to allow an orphan to qualify even if there is also a step-parent who survives the death of the orphan's last natural parent.

Edward John Trawinski, Matule & Trawinski, Elmwood Park, N.J. (*statement*)

Strongly approved of proposed technical amendment because it would simplify drafting and estimate planning for use of the orphan's exclusion by allowing use of a "pot trust."

Thomas Wriggins III, Rockford, Illinois (*statement*)

States that the uncertainty of whether to apply the medical, statutory or testator specified definitions of surival could operate to deprive an orphan of use of the orphans' exclusion in the more valuable estate because of the order of the parent's death in an accident resulting in fatal injuries to both of them. Does not believe that Congress should specify what constitutes survival, but proposes an amendment to Code section 2057(a) which would avoid controversy by allowing reference to applicable state law or the testator's intentions as well as medical fact.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Recommends that section 3(l) of the bill be changed to permit the settlor to set aside the qualifying property in a trust with any provisions he or she chooses to utilize, so long as all of the defined orphans are original beneficiaries of the trust and no other person is a beneficiary, other than adult descendants, of the decedent. Recommends further that the term "pro-rata" be clarified to explain whether a stranger can be brought in as a beneficiary in an orphan's exclusion trust. Recommends further that there be clarification of whether a "peel-off" approach to vesting and distribution of the beneficiaries' interest in an orphans' exclusion trust can be utilized.

Disclaimers (sec. 3(m))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Opposes the enactment of section 3(m) and proposes that the section be amended to prohibit qualified disclaimers if the disclaimed property passes to a trust or trust equivalent in which the disclaiming party has an interest.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Recommends permitting a disclaimer by a decedent's spouse even though the spouse has a beneficial interest in the income and principal of, and a special power of appointment over, the trust into which the disclaimed property passes. Further recommends that the requirement that an interest "pass" should be enlarged to permit the disclaimer of powers of appointment by beneficiaries and to authorize disclaimer of fiduciary and other non-beneficial powers.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

Hopes that it would be possible for a surviving spouse to make a qualified disclaimer even if the spouse will have a possibility of receiving the "disclaimed" property in the discretion of the trustee, or have a limited testamentary power of appointment or a right of withdrawal over the "disclaimed" property, as well as an income interest in such property. Believes the Committee report should clarify whether or not this is a correct interpretation.

Donald S. Buzard, Chairman, Disclaimer Legislation Drafting Committee, State Bar Association of Wisconsin (statement)

Recommends technical correction be changed because (1) it permits qualified disclaimer of testamentary gifts by a surviving spouse but not disclaimer of inter vivos gifts, (2) it is unclear whether the interest received by the surviving spouse after disclaiming another interest must be outright, or if it can be in trust; and (3) the interest the surviving spouse may receive in the disclaimed property is limited to an income interest, whereas standard estate planning would often require provision of a limited corpus interest as well. Recommends that the critical factor to be determined is whether the disclaimer person must direct how the disclaimed property is disposed of. Believes that if no such direction is required, the disclaimer will be valid even though the disclaimant receives an interest in the disclaimed property.

William C. Golden, Chairman, Committe on Federal Taxation, Chicago Bar Association (statement)

Recommends that Code section 2518 be amended to clarify whether a trust is a separate person from a disclaimant for purposes of determining whether the disclaimant receives any interest in disclaimed property. Recommends further that Code section 2518 be amended to clarify whether a qualified disclaimer will be permitted in cases where the disclaimer is ineffective under state law, and whether a qualified disclaimer can be made by a guardian, conservator, executor or other fiduciary, where permitted by state law. Recommends further that the first line of Code section 2518(b)(4) be amended in order to clarify that a disclaimer is valid if either the property or an interest therein passes to the disclaimant. Recommends further that Code section 2518 be amended to permit a qualified disclaimer of a specific amount, specific property or a power of appointment with respect thereto.

Termination of Certain Powers of Independent Trustees Not Subject to Tax on Generation-Skipping Transfers (sec. 3(n)(1))

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (*Sept. 8*)

Recommends that the definition of related or subordinate trustee be expanded to include partners and employees of the grantor or of any beneficiary, and employees of any partnership in which the partnership interest of any or all of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of either or both operating control and distributive share of partnership income.

William M. Goldstein, Morgan, Lewis & Bokius, Washington, D.C. (*Sept. 8*)

Supports section 3(n)(1), but also recommends that an "independent" trustee shall have no taxable power if he only has a power to allocate income or corpus which has been irrevocably committed to exempt charitable purposes.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

States that section 3(n)(1) is some improvement over existing law, but that a better solution is to eliminate the distinctions between individual and corporate trustees. In the alternative, suggests: (1) revising section 3(n)(1) so that an interest as a potential appointee under a power held by another person shall not be an interest in the trust for purposes of proposed Code section 2613(e); (2) defining an independent trustee as one who is not closely related to the grantor or a beneficiary having a present interest in the trust; (3) eliminating the disqualification arising from a relationship between a trustee and a beneficiary through the trustee's employment by a corporation in which a beneficiary has significant voting control or is an executive; (4) alternatively, limiting disqualifying relationships to those existing at the time property is transferred in trust; (5) amending the language of proposed Code section 2613(e)(2) so that the spouse of the grantor or any beneficiary who is living apart would not be disqualified as a related or subordinate trustee; and (6) making the language of section 3(n)(1) track Code section 672(c)(2).

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Recommends the elimination of the distinction between individual and corporate trustees in section 3(n)(1) of the bill. Also recommends that the individual trustee-beneficiary rule be eliminated by amending Code section 2613(d)(2).

Marion R. Fremont-Smith, Choate, Hall & Stewart, Boston, Mass. (Sept. 8)

Recommends modification of section (3)(n)(1) of the bill which provides an exception from the generation-skipping trust rules for "independent trustees." Further, states that this is no objection to the modifications proposed by the Treasury Department.

James B. Ames, Ropes & Gray; Marion R. Fremont-Smith, Choate, Hall & Stewart; Frederick D. Herberich, Gaston, Snow & Ely Bartlett; Robert J. McGee, Palmer & Dodge; Charles Y. Wadsworth, Hill & Barlow; James G. Wheeler, Hutchins & Wheeler, all of Boston, Mass. (Statement)

Support proposed technical correction but also suggest that the lineal descendants exception from the generation-skipping trust rule be modified to add an exception for trustees who have no beneficial interest in the trust, whose only power is to dispose of income or principal to or for a beneficiary or class of beneficiaries named in the trust instrument, and who are not the spouse, father, mother, issue, brother or sister of the grantor or any beneficiary, or are not subservient by reason of an employment relationship.

Charles M. Cahn, Jr., Blades & Rosenfeld, Baltimore, Md. (statement)

Recommends that more precise definitions be provided of "employees" and "executive" and that the definition be limited to subordinate employees of the grantor.

Bryan M. Dench, Skelton, Taintor & Abbott, P.A., Lewiston, Maine (statement)

Recommends that the exception from taxable powers for certain trustees who can only dispose of corpus "to a beneficiary" or class of beneficiaries be amended to conform with most trust language, which provides for disposition "to or for the benefit of a beneficiary" or class of beneficiaries.

Richard A. Massman, Hewett, Johnson, Swanson & Barbee, Dallas, Texas (statement)

States that the broad definition of the terms "beneficiary" and "power" in Code section 2613 (c) and (d) may result in the inequitable imposition of a generation-skipping transfer tax when a grantor utilizes an individual rather than a corporate trustee. States further that section 3(n)(1) of the bill will alleviate problems if an independent trustee is used, but points out an anomoly: a grandfather may establish a trust for his grandchildren, naming his son as trustee, without any adverse generation-skipping transfer tax problems, but the grandfather's brother or a complete stranger belonging to the grandfather's generation may not establish exactly the same trust without the imposition of a generation-skipping transfer tax upon the death or resignation of the trustee if the trustee is related to a beneficiary. Suggests either deleting from proposed Code section 2613(e)(1) the words "who are lineal descendants of the grantor" or modifying the definition of "related or subordinate trustee" in proposed Code section 2613(e)(2)(B) by deleting the words "or of any beneficiary" from subparagraphs

(i) and (ii). Believes that powers exercised by an individual trustee should not cause the trustee to be treated as a "younger generation beneficiary" for purposes of applying the generation-skipping transfer tax.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Suggests that the term, "related or subordinate trustee" is very broad, and recommends that it be qualified by the term "with a present interest or present power."

Juris Padegs, Senior Vice President—Law, Scudder, Stevens & Clark, New York, N.Y. (statement)

Supports the changes proposed in section 3(n)(1) of the bill which would remove an artificial and technical obstacle to the use of independent and unrelated individuals as trustees.

Alternate Valuation Date in the Case of a Generation-Skipping Trust (sec. 2(n)(3))

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division American Bankers Association (Sept. 8)

States section 3(n)(3) is an improvement but does not go far enough. Believes that parity of tax treatment requires that all Chapter 13 transfers occurring at or after the death of the deemed transferor be entitled to use the alternate valuation method. Notes that this view is premised on the assumption that the alternate valuation method is appropriate only when the death of a beneficiary is the taxable event. Opposes the idea that use of the alternate valuation method is appropriate only when a taxable termination occurs by reason of the death of a beneficiary.

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the alternate valuation date also be available where a taxable termination is postponed beyond the death of a single deemed transferor because of the existence, at the death of the deemed transferor, of a beneficiary in the same generation as the deemed transferor.

Adjustment for Trust Accumulation Distribution Subject to Transfer Tax (sec. 3(o))

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Recommends that paragraph (6) (A) in section 3(o) be amended to encompass both state death taxes and federal estate taxes. Notes that section 3(o) solves the "double tax" problem with respect to accumulation distributions, but not with respect to current income. States that the "double tax" on current income could exceed 100 percent of the distribution and recommends that this be changed by allowing the recipient to deduct the Chapter 13 tax paid from the income tax imposed. Further recommends that the effective date provision be amended to apply to accumulation distributions occurring after December 31, 1976.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Recommends that section 3(o) of the bill be revised to define what is to be included in the denominator of the fraction under new subparagraph (6) (A) (i) to be added to Code section 667(b).

D. Clerical Corrections, Cross References, Etc. (sec. 4 of the bill)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the bill refer only to section "57(c)(1)(B)" rather than "section 57(c)."

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Indicates that the word "appreciated" should precede "carryover" in Code section 1040(b)(2), to conform with the section as a whole. Notes further that section 2(n) of the bill should be amended to use "and", rather than "or", in section 665(d)(1)(A) of the Code.

Francis O. McDermott, on behalf of Trans Union Corporation (statement)

States that section 4(a)(4) of the bill should change the reference in Code section 48(d)(4)(D) from "section 57(c)(2)" to "section 57(c)(1)(B)," not to "section 57(c)," which defines "net lease."

E. Comments on Provisions not Included in H.R. 6715

Tax shelter provisions—"at risk" rule (sec. 204(a) of the 1976 Act)

Thomas A. Martin, Taxation Director, American Petroleum Institute, Washington, D.C. (statement)

Recommends that the "at risk" provisions of Code section 465(c) be clarified to define which oil and gas activities are subject to the provisions. Believes that the definition should exclude activities which are performed beyond the point where the oil or gas is extracted from the ground.

Farm operations (sec. 207 of the 1976 Act)

Joint Statement of National Livestock Tax Committee, American National Cattlemen's Association, National Livestock Feeders Association, and National Wool Growers Association

Method of accounting

Propose farm corporations and partnerships in existence on September 16, 1976, which are affected by the required change to accrual accounting, be allowed to spread the accounting adjustments over the lesser of ten taxable years or their remaining life, if the taxpayer has a definite life.

Propose also that where a farming syndicate adopts accrual accounting and capitalizes its preproductive expenditures, it should be able to elect out of the limitation on deductions otherwise applicable to syndicates.

Attribution rule

Recommend clarification of the attribution rule of Code section 464(c)(2)(E) to include in the members of the individual's family his or her spouse and the spouse of other family members.

Oil and gas (sec. 205 of the 1976 Act)

Thomas A. Martin, Taxation Director, American Petroleum Institute, Washington, D.C. (statement)

Recommends that the Code should be clarified to conform to the statements in the House Report on the 1976 Act and the Joint Committee Staff Explanation on the 1976 Act, and specifically state that unitization and pooling arrangements are not to be viewed as recapture triggering events. Suggests the language of section 1254 should be amended to expressly provide that a lease or sublease does not constitute a recapture triggering event. Further suggests that the statute should be amended to clearly indicate that intangible drilling cost recapture deals only with intangible drilling costs on productive wells.

Further recommends that the Code should be amended to clearly reflect that taxpayers will be entitled to use cost-depletion reduction regardless of whether or not they have in fact experienced an increase in their deduction for depletion as a result of the capitalization of intangible drilling costs.

Partnerships—retroactive allocations (sec. 213(c) of the 1976 Act)

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that consideration be given to an amendment excluding from application of the "varying interest" requirements of Code section 706(c)(2)(B) service partnerships that adjust distributive shares to reflect actual performance during the year; alternatively, that allocations of profit, but not of losses, be excluded from the application of Code section 706(c)(2)(B); alternatively, that the "substantial economic effect" test of section 704(b)(2) be applied to retroactive allocations.

Minimum tax (sec. 301 of the 1976 Act)

Tax preference item (sec. 301 of the 1976 Act)

Thomas A Martin, Taxation Director, American Petroleum Institute, D.C. (statement)

Notes that the 1976 Act directs that neither individuals nor corporations be subject to the minimum tax if they receive no tax benefit from the tax preference, but Code section 58(h) could be interpreted to mean that a particular deduction will become a tax preference in the year incurred rather than in the year it is used. Suggests amending the language to clearly provide that an item is subject to the minimum tax only if it reduces taxable income for the current year.

Suggests clarification of the Code is needed to provide that the computation of the minimum tax preference item for intangible drilling costs is determined on an aggregate rather than a "well-by-well" basis. States this interpretation is necessary to prevent the provision allowing straight-line amortization in the computation from becoming virtually inoperative.

Further suggests that the offset for "straight-line amortization" in computing the amount of intangible drilling costs subject to the minimum tax should be clarified to include total costs incurred in all years beginning after 1975 rather than those costs incurred in the current year only. States that this is the only logical interpretation for the "straight-line amortization" offset provision since the alternative to current expensing of intangible drilling costs would be amortization beyond the current year, requiring that the amortization in those subsequent years be given effect in the offset computation.

Minimum tax and capital gains (sec. 301 of the 1976 Act)

Ernest S. Christian, Jr., Patton, Boggs and Blow, Washington, D.C., on Behalf of Armco Steel Corp. (statement)

Proposes amendments to Code sections 56(c)(3) and 38 which would allow a deduction of the 1½ percent ESOP investment credit for purposes of computing the employer's liability to minimum tax. Recommends that the amendment should apply to taxable years ending after December 31, 1974.

Minimum tax and capital gains (sec. 301 of the 1976 Act)

Gerald P. Herold, Linch, Herold & Mackiewicz, Omaha, Nebraska (Sept. 8)

Urges that capital gains realized as a result of a binding contract entered into prior to October 4, 1976 (the effective date of the 1976 Act) not be treated as a tax preference item provided certain technical requirements are satisfied.

Rental of vacation homes (sec. 601 of the 1976 Act)

Wesley N. Fach, Vice President, Tax-Legal Division, National Foreign Trade Council, Inc. (statement)

Recommends that Code Sec. 280A be amended to make it clear that it applies only to vacation homes and not to principal residences.

Accumulations trusts

Deemed distributions in prior years (sec. 701(a)(1) of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that Code section 662(b) be applicable to determine the character of income included in accumulation distributions to nonresident beneficiaries of United States trusts. Further recommends that (1) Code sections 871, 881, 882, 1441 and 1442 be revised to provide that a foreign beneficiary include in gross income any U.S. taxes attributable to an accumulation distribution and deemed distributed by Code section 666, and any expenses incurred in the production of income distributed by a trust and included in the taxpayer's gross income for U.S. purposes, including any expenses borne by another party on behalf of the trust; (2) Code section 1441(c) be amended to provide that a trustee-withholding agent may withhold less than the applicable statutory or treaty withholding rate where he can establish that the U.S. taxes paid by the trust and attributable to the distribution under Code section 666 will satisfy the foreign beneficiary's U.S. tax liability on the accumulation distribution; (3) Code section 667 be amended to provide that the computation of the foreign person's tax on an accumulation distribution may be made without regard to the throw-back rules of section 667 if, in the year in which the beneficiary takes the accumulation distribution into income, he is neither engaged in a trade or business in the United States nor is the beneficiary of more than one trust.

Gain on trust disposition of property received within two years (sec. 701(e)(1) of the 1976 Act)

Jay W. Glasmann, Ivins, Phillips & Barker, Washington, D.C. (statement)

Recommends amending Code section 644(b) so that a trust selling appreciated property within two years after receipt would be taxed only when the trust or the person who transferred property to the trust would have been taxed. Suggests substituting "recognized" for "realized" in section 644(b)(1). Recommends the change should apply to all transfers in trust made after May 21, 1976, and that the Committee Report and the regulations make it clear that the property received in the tax-free exchange is subject to section 644 and within the same time limits as that applicable to the property originally transferred to the trust.

Multiple trust (sec. 701 of the 1976 Act)

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends that the multiple trust rule be clarified so that it will apply only to distributions made after December 31, 1975.

Thomas P. Sweeney, Richards, Layton & Finger, Wilmington, Delaware (statement)

Recommends elimination of the multiple trust rule for trusts which were in existence prior to the effective date of the 1976 Act, and that the rule be made inapplicable to trust accumulations before the beneficiary reaches the age of 21. Recommends further taxes paid by a trust be allocated or deemed paid on the basis of marginal tax, rather than proportional tax, possibly by means of a return to the "Preservation-of-Character-of-Income rule."

Investment tax credit (sec. 804(a) of the 1976 Act)

Leonard L. Silverstein, Silverstein & Mullens, Washington, D.C. (statement)

States that the word "issued" should be changed to the word "used" in Code section 48(k)(4)(B), as amended by section 804(a) of the 1976 Act.

Foreign tax credit amendments (secs. 1031–37 of the 1976 Act)

Thomas A. Martin, Taxation Director, American Petroleum Institute, Washington, D.C. (statement)

States that although it appears clear from the Joint Committee staff's explanation of the 1976 Act that Code section 904(f) was designed to apply only in those situations where foreign losses have offset domestic income, a literal reading of the section leads to the conclusion that foreign source income may have to be treated as domestic source income even where foreign losses were not used to offset domestic income in a prior year. Suggests an amendment to Code sections 904(f)(2) and (4) to implement the Congressional intent of recapturing overall foreign losses and foreign oil-related losses only where the taxpayer obtained a tax benefit by using such losses to offset domestic source income.

Carl C. Nordberg, Jr., Groom S. Norberg, Washington, D.C. (statement)

Recommends that 1976 Act section 1035(c), deferring the effective date of Revenue Ruling 76–215 to taxable years ending after December 31, 1977, be amended so that the ruling will apply instead to taxes paid or accrued to a foreign government after December 31, 1977. States that the amendment is designed to benefit fiscal year taxpayers who pay taxes to a foreign government before December 31, 1977, but whose fiscal year does not end until after December 31, 1977.

Renato Beghe, Tax Section, New York State Bar Association (statement)

Suggests an additional amendment (under Code sec. 879) to allow adjustment in U.S. tax treatment for foreign tax credit purposes of community income to conform with treatment by foreign countries where two countries differ.

DISC (sec. 1101 of the 1976 Act)

Sidney J. Hess, Jr., Donald S. Lowitz, David W. Allen, Aaron, Aaron, Schimberg & Hess, Chicago, Ill. on behalf of Erva Corporation (statement)

Recommend that Code section 1101(g)(4) be amended to provide that recapture of DISC deferral benefits when the stock was disposed of in a Code section 337 liquidation should be effective for transactions taking place after December 31, 1976, rather than December 31, 1975. Note that at the time in June and July 1976 when the taxpayer corporation negotiated the sale of its assets, including its stock in a DISC, there was no recapture rule in the law for a sale of DISC stock in a Code section 337 liquidation. Believe it is unfair to apply the new provision retroactively to the taxpayer corporation.

Administrative provisions

Disclosure of returns (sec. 1202(a)(1) of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the exemption provide by Code section 6103(k)(4) be revised to apply to a foreign government which has an income tax or an estate or gift tax convection or treaty with the United States.

Hon. Edward I. Koch, Member of Congress, New York (statement)

Recommends that information supplied by a third-party should be subject to the due process protection of a court order before release by the IRS to other agencies for nontax criminal investigations. Believes that the disclosure provisions should not distinguish between information supplied by the taxpayer and information supplied by third-party sources.

Return preparers (sec. 1203 of the 1976 Act)

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

Suggests that Code section 6695(f) be amended to allow banks which prepare tax returns for their customers to deposit the refund check directly in the customer's bank account without incurring a penalty for not obtaining the taxpayer's endorsement.

Earl Hall, C.P.A., Lewiston, Idaho (statement)

Recommends that the "person" rather than the "individual" who has primary responsibility for the return be required to sign it because in many cases a partnership or a corporation is the only "person" primarily responsible for preparing an income tax return.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends that banks which prepare income tax returns for clients be permitted to credit the government refund check directly to the taxpayer's bank account, rather than sending it to the taxpayer for endorsement.

Tax-exempt organizations

Charitable remainder trusts for estate tax purposes (sec. 1304 of the 1976 Act)

Dennis P. Bedell, Miller & Chevalier, Washington, D.C. (statement)

Recommends that an appropriate statement be included in the legislative history of H.R. 6715 providing that the extension of time to conform the 1969 Act rules for certain charitable remainder trusts before December 31, 1977, does not require the death of the settlor prior to that time, as now interpreted by the Internal Revenue Service.

Income from fairs (sec. 1305 of the 1975 Act)

James P. Low, President, American Society of Association Executives (Sept. 8)

Recommends that the 1976 Act exemption from unrelated business income tax for trade shows income by a section 501(c) (5) or (6) organization, be extended to sponsorship of a qualified convention and trade show activity by a section 501(c) (3) organization.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends that the income from advertisers attending trade shows not be treated as unrelated business taxable income for charitable organizations or social-welfare organizations (Code sections 501 (c)(3) and (c)(4)) as well as for labor, agricultural, horticultural, business leagues, chambers of commerce and other organizations set out in Code sections 501(c) (5) and (c) (6).

Declaratory judgments (sec. 1306 of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that contributions within the limits of Code section 7428(c) (2) remain deductible until a declaratory judgment is finally adjudicated, including the appellate process.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (statement)

Recommends an amendment which will provide protection for a charitable contributions deduction where the organization wins a declaration judgment action but is reversed on appeal, and also recommends that the protection be extended to cases in which the taxpayer contests the denial of exempt status in the Court of Claims.

Lobbying activities of public charities sec. 1307 of the 1976 Act)

Arnold B. Kogan, Secretary, the Historic Harrisburg Association, Harrisburg, Pa. (*statement*)

Recommends that lobbying provisions be amended to make it clear that efforts by historic preservation organizations or others in asking a City Council to adjudicate matters which under existing law it is required to adjudicate would not be considered lobbying. States that any expenses incurred by the Historic Harrisburg Association in presenting an historic preservation case concerning demolition or exterior alteration changes before the City Council might be considered lobbying and be charged against the Association's lobbying ceiling under Code section 501. Recommends that the Code be amended to make it clear that such efforts by historic preservation associations would not be considered lobbying under Code section 501.

Pension provisions

H.R. 10 plans (secs. 1501 and 1502 of 1976 Act)

Mr. and Mrs. Lloyd Royal, Springfield, Nebraska (*statement*)

Recommends that husbands who participate in Keogh Plans should be allowed to designate a portion of their contribution for their wives the same as those contributing to an I.R.A.

Retirement deductions for members of the Armed Forces Reserves (sec. 1503 of the 1976 Act)

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Recommends that Code sections 219(c)(2), and 220(c)(3) be amended to provide that marital status be determined as of the date of the contribution to an individual retirement plan, rather than as of the end of the taxable year as now provided. States the present rule could disqualify contributions made in good faith if the marriage is dissolved before the end of the year.

Employee choice compensation plans ("cafeteria plans") (sec. 1506 of the 1976 Act)

TRW, Inc. (*statement*)

Recommends that H.R. 6715 include the provisions of H.R. 8908, which relates to the tax treatment of employees under nondiscriminatory employee choice compensation plans (also called "Cafeteria Plans"). H.R. 8908 would add a new section 124 to the Code to make it clear that an employee covered under these kinds of plans will be taxed in accordance with their own election, provided that the election is made before the pay period to which the benefits relate and is not revocable by the employee during such period.

Estate and gift tax provisions

Marital deduction (sec. 2002 of the 1976 Act)

Mr. and Mrs. Lloyd Royal, Springfield, Nebraska (*statement*)

Believe that there should be no estate tax when property is left to a spouse. Alternatively, suggest that joint tenancy property should be deemed to be owned one-half by each spouse.

The American Farm Bureau Federation (statement)

Recommends that the Internal Revenue Service publish an understandable explanation of the marital deduction changes enacted by the 1976 Act and the reasons for elimination of the $30,000 lifetime exemption for gifts.

Special use valuation for family farms (sec. 2003 of the 1976 Act)

Edwin W. Sale, Kankakee, Illinois (statement)

Criticizes special valuation and extension of estate tax payment provisions because most farms cannot qualify for them, since they are managed under tenant arrangements, their value is far in excess of the $500,000 reduction they could receive, and they would be unable to obtain signatures on the agreement from minor or incompetent heirs. Suggests revising Code sections 2032A, 6166 and 6166A to enable individuals and family owners of a farm or closely-held corporations to be able to take practical advantage of those sections.

Jack Arthur Kirby, Rosemont, Pennsylvania (statement)

Recommends that the "material participation" requirement include the operation of a farm through a professional farm manager.

Extension of time for payment of taxes (sec. 2004(e) of the 1976 Act)

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Recommends that section 303 be amended so that the determination of the maximum amount of the redemption distribution takes into account all federal and state income taxes attributable to gain on the redemption.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Recommends that the requirements of Code sections 6166(g) (1) (B) and 6166A(h) (1) (B) be liberalized from requiring a minimum estate tax payment equal to the entire section 303 stock redemption to requiring at least one half of the redemption proceeds be applied to the balance of the federal estate tax due.

Carryover basis (sec. 2005 of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that Code sections 1245(b), 1250(d), 1251(c), 1252 and 1254 be amended to make it clear that recapture income is limited by the amount of gain recognized where appreciated carryover basis property is used to satisfy a pecuniary bequest.

Recommends that Code section 1040 be amended to make it clear that no gain shall be recognized where a pecuniary bequest is satisfied by the transfer of appreciated carryover basis property directed by a testator to be valued at federal estate tax value, so long as such funding is determined with regard to a proportionate sharing of post-estate tax valuation date appreciation and depreciation.

John S. Pennell, Chairman, Tax Section, American Bar Association (Sept. 8)

Strongly urges the Committee make an early and in-depth study of the effect of the carryover basis provisions and of the host of administrative problems which have been created.

Arley J. Wilson, Chairman, Probate, Property and Trust Law Committee, Iowa State Bar Association (Sept. 8)

States that cumbersome problems have been created by the carryover basis rules in the administration of typical farm and business estates. Notes that there is no readily available record of acquisition date and cost of business assets when dealing with farmers raising livestock, chickens, fish or bees. Further notes that executors must furnish beneficiaries with a list of bases of each item in an estate or be fined up to $7500. Suggests that an executor must value each stamp acquired at a different time in a stamp collection, each cow acquired at a different time in a herd, each book in a law office, each improvement in capital assets. Recommends that the carryover basis rules be discarded or substantially revised because of their cumbersome nature, the high expenses of compliance, and the planning difficulties they have created.

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Recommends the following amendments to the carryover basis provisions of Code section 1023: (1) that section 1023(b)(3) be amended to increase the $10,000 exclusion for personal or household effects to such a level that carryover basis would no longer be a problem for such assets in the estate of persons other than collectors; (2) that Code section 1023(d) be amended to increase the minimum amount far carryover basis properties from $60,000 to $175,625, so that those estates not subject to federal estate tax would also be spared the complexities of the carryover basis; and (3) that Code section 1023(c) be amended to provide that the estate tax adjustment will be made at the top rather than average rate, and that Code section 691(c) be amended so as to return to the prior rule that this deduction is determined by comparing the actual federal estate tax with what it would have been without the section 691 item of income in the gross estate.

Further recommends the grandfathering of all assets of a decedent which were owned by him on December 31, 1976, so that they will be subject to the old rules and get the full step-up or step-down in basis at death. States this would eliminate the problems caused by inadequate records.

John J. Szymanski, Member, Tax Legislative Subcommittee, International Council of Shopping Centers (Sept. 8)

Recommends either that the carryover basis rules not apply to any assets owned by a decedent prior to January 1, 1977, or that the carryover basis effective date be deferred to some point in the future so as to give practitioners time to understand the new rules.

Kenneth G. Hance, Jr., President, and Alan J. B. Aronsohn, Tax Counsel, National Realty Committee (Sept. 8)

Recommend deferral of the effective date for the carryover basis provisions to December 31, 1978.

National Association of Home Builders, Washington, D.C. (statement)

States that the fresh start adjustment for real property is inequitable as it is based on the assumption of ratable increases in value over the holding period.

Recommends that section 3(c) of the bill be amended to provide an option to establish the fair market value for real property (or interests in real property) on December 31, 1976 by independent written appraisal.

Honorable Berkley Bedell, M.C., Iowa (statement)

Recommends that the carryover basis provision be simplified and that procedures for compliance be rationalized without jeopardizing the basic tax reform objectives of the provision. Contends that the existing provision cannot be effectively administered.

Rento Beghe, Chairman, Tax Section, New York State Bar Association (statement)

Recommends deferral of the effective date of carryover basis rules until December 31, 1978.

J. H. Perkins, McCormick, Barstow, Sheppard, Coyle & Wayte, Fresno, California (statement)

Recommends repeal of the carryover basis provision.

Frank M. Robbins, Jr., Robbins & Bohr, Inc. (statement)

Recommends that the carryover basis rules be repealed.

National Association of Realtors (statement)

Recommends repeal of the carryover basis provisions and reinstatement of stepped-up basis at date of death or, alternatively, postponement of the effective date until 90 days after issuance of final regulations by the Treasury Department, but not before December 31, 1978.

Thomas B. Denegre, Jr., Vice President & Trust Officer, Chesapeake National Bank, Kilmarnock, Va. (statement)

Recommends repeal of the carryover basis provisions.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

Recommends defining "personal and household effects" in Code section 1023(b)(3). Recommends further that Code section 1212 be amended to permit capital loss carryovers from a decedent to his estate and its beneficiaries in accordance with the concept of Code section 642(h).

Robert D. Shapiro, Industrial Soap Company, St. Louis, Mo. (statement)

Recommends repeal of the carryover basis provisions because they cause serious administrative and tax problems; they destroy incentives to build medium-sized businesses, and they would not produce meaningful revenues during the next two decades.

William H. Moorhead, Vice President and Trust Officer, First National Bank of South Carolina, Anderson, S.C. (*statement*)

Urges the repeal of the carryover basis provisions. Notes the adverse effect of the provisions on small estates. Explains that while the 1976 Act requires estate tax returns from fewer estates, the Act has successfully imposed Federal supervision of virtually all estates.

James K. Watkins, III, Trust Officer, First Wisconsin National Bank of Madison, Madison, Wis. (*statement*)

Urges the repeal of the carryover basis provisions. Suggests that the provision will not have the desired effect of encouraging individuals to transfer their assets before death rather than waiting for the "step-up" in basis received after death under previous law. Points out specific problems:

(1) difficulty of obtaining original cost bases of assets;

(2) time required to compute adjustment to cost bases, such as "fresh start" adjustments; death taxes paid by the estate, death taxes paid by beneficiaries, and "minimum basis";

(3) delays resulting from adjustments made in audits;

(4) complexities in distributing assets; and

(5) confusion on the part of beneficiaries who will receive three different bases for each asset.

Roger Fruin, Fruin and Andrews, Paris, Illinois (*statement*)

Believes that the minimum carryover basis should be increased to $200,000 because the cost of complying with the present rules of carryover basis on small estates where no federal estate tax is due will be prohibitive. States that cost to the taxpayer for executors' and attorneys' fees will be increased beyond any reasonable benefit to the government.

Eli Gorodezky, Gorodezky, Marron & Diamond, Phoenix, Ariz. (*statement*)

States the carryover basis provisions are very difficult to comply with, particularly in the case of real estate which has been held in a family for a long time.

Alfred M. Naff, Johnston, Barton, Proctor, Swedlaw & Naff, Birmingham, Ala (*statement*)

Suggests that the carryover basis provisions present an administrative nightmare for any executor or administrator of an estate and impose unwarranted liabilities upon those persons.

H. Davison Osgood, Jr., Attorney, Portland, Maine (*statement*)

States that the carryover basis provisions present the estate planner with an impossible task. Believes that the $10,000 exemption does not adequately cover many situations. Worries that competent people may be reluctant to serve as administrators and executors in view of the potential liability for fines and penalties.

William E. Proulx, Carothers, Bowersock, Friendman & Proulx, Fremont, Calif. (*statement*)

Dislikes carryover basis provisions. Suggests postponing effective date until such time as members of the Ways and Means Committee have attempted to personally comply with the carryover basis rules. Suggests raising tax rates or reducing the amount of the unified credit as preferable methods for raising revenue.

Mr. and Mrs. Lloyd Royal, Springfield, Nebraska (statement)

Urge repeal of the carryover basis provisions. Believe inflation cannot be assumed to be constant from year to year. Prefer that same valuation be used for both estate and income tax purposes.

Robert K. Ryan, Ryan, Hartzel, Ryan & Bock, Frankfort, Ind. (statement)

Believes the carryover basis provision to be unworkable and unmanageable on a day-to-day basis. Notes the difficulty of obtaining the basis of something like a coin collection purchased at different times and places. States the expense and time spent in complying is not proportional to any revenue benefit to the Internal Revenue Service. Indicates that a further problem is that most taxpayers do not keep proper records.

John W. Tarbox, Vice President and Manager, Financial Planning Department, Security Trust Co., Rochester, N.Y. (statement)

States that the requirement of keeping the cost basis of estate assets is very time-consuming and impossible to comply with in some instances.

Bryan M. Dench, Skelton, Taintor & Abbott, P.A., Lewiston, Maine (statement)

Recommends that no carryover basis report be required where no estate tax return is required to be filed and that all tangible personal property with a value of less than $5,000 (or other objective figure) be exempted from the carryover basis rules.

Gordon H. Marsh, Chairman, Committee on Art, The Association of the Bar of the City of New York (statement)

Recommends amending Code sections 1023 and 1221(3) to assure capital gain treatment to artists' estates and distributees on sale of the artists' work which they inherit from the artist. Believes that artists' estates and distributees are entitled to relief, irrespective of what the policy decision may be with respect to the income tax treatment of other types of ordinary income property in the hands of estates and distributees.

Carl L. Zanger, Past Chairman, Committee on Art, The Association of the Bar of the City of New York (statement)

Notes that Code section 1221(3) provides that a copyright, literary, musical or artistic composition or similar property will not be considered a capital asset in the hands of the creator or of any person whose basis for determining gain is determined in whole or in part by reference to the basis of such property in the hands of the creator. As a result of the carryover basis provisions in the 1976 Act, distributees or legatees of artistic property will receive ordinary income treatment on sale and a charitable contribution deduction limited to the artists' basis. Compares this treatment unfavorably with the treatment of the legatee or distributee of the inventory of any other sole proprietor. Suggests that this harsh and discriminatory result be remedied.

Donald V. Moorhead, Sutherland, Asbill & Brennan, Washington, D.C., on behalf of Massachusetts Mutual Life Insurance Company (statement)

States that as a result of the change in the carryover basis provisions the potential capital gain under a stock redemption plan will generally be greater than the potential capital gain under a shareholder cross-purchase plan. Notes that shareholders are frustrated in their attempts to change from a stock-redemption plan to a cross-purchase arrangement because the proceeds of a life insurance policy purchase by a shareholder from the corporation are not protected from the transfer for value rule by any of the exemptions in Code section 101(a)(2). Recommends that the transfer for value rules be amended to exclude, for a reasonable period of time, transfers of life insurance policies by a corporation to its shareholders where such transfers are made to convert stock redemption plans in existence on the effective date of the 1976 Act to shareholder cross-purchase plans.

William T. Gibb, American Council of Life Insurance, Washington, D.C. (statement)

Urges that Code section 101(a)(2) be amended to remove the tax impediment to changing from a stock redemption to a cross-purchase arrangement by adding to the exceptions to the transfer for value rules an exception for a life insurance contract which is transferred from a corporation to the co-shareholder of the insured. This change would eliminate the unequal application of the new carryover basis rules to stock redemption plans and cross-purchase arrangements.

National Association of Home Builders, Washington, D.C. (statement)

Recommends that a provision be added to H.R. 6715 to amend Code section 189 to provide that upon the death of a taxpayer, his unamortized balance of construction period interest and taxes with respect to real property will be added to his basis in determining the basis of such property in the hands of the transferee under Code section 1023.

Generation-skipping transfer (sec. 2006(a) of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Urges that the presumption of Code section 2602(c)(5)(A) be reversed so that in the case of a decedent whose will or trust contains a formula marital deduction bequest a generation-skipping transfer where the decedent is deemed transferor will not be included in the decedent's gross estate for estate tax marital deduction purposes unless a contrary intention is specifically stated in the decedent's will or trust.

Charles C. Butt, President, H. E. Butt Grocery Co., Corpus Christi, Tex. (statement)

Proposes that the effective date for the generation-skipping trust rules be August 5, 1976, rather than April 30, 1976, since the provisions were added by the Senate on July 20, 1976, and it was on August 5, 1976 that the Senate agreed to use a retroactive effective date.

Harold F. Measley, Jr., Tax Counsel, Wilmington Trust Co. (statement)

States that the exception for amendments to a will or revocable trust in Code section 2006(c) (2) (B) would not apply to a new will or a new revocable trust created after April 30, 1976, even though the new instrument did not increase the generation-skipping transfers contained in the old instrument. Recommends that Code section 2006(c) (2) (B) be amended to protect such a new will or revocable trust.

Thomas P. Sweeney, Richards, Layton & Finger, Wilmington, Del. (statement)

States the effective date of the generation-skipping trust rules should be October 4, 1976, the date the President signed the 1976 Act, rather than April 30, 1976.

Orphan's exclusion (sec. 2007 of the 1976 Act)

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (Sept. 8)

Recommends eliminating paragraph (1) of section 2507(a) so that the orphan's deduction would be available regardless of the existence of a surviving spouse of the decedent as long as the orphan has no known parent following the decedent's death. In the alternative he recommends allowing an orphan's deduction for the difference between the marital deduction allowed in determining the federal estate tax and the maximum possible marital deduction.

Administrative changes (sec. 2008(c) of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the 1976 Act amendment of Code section 6323 (providing that a notice of federal tax lien had to be recorded in a special index maintained at the IRS district office where the property is located) be changed so as to eliminate the indexing requirement with respect to real property only if required by state law.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (statement)

States clarification is needed under Code section 6075(b) as to whether taxable gifts of $25,000 or less per person are reportable before or after the election to split gifts between husbands and wives.

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (Sept. 8)

Recommends that a limit be placed on the liability of an executor who relies upon information furnished by the Internal Revenue Service as to the decedent's adjusted taxable gifts, in the same way as is done in Code section 2603(a) (2) with respect to a trustee's personal liability for the Chapter 13 tax.

Disclaimers (sec. 2009(b) of the 1976 Act)

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

Recommends amending section 2518(c)(1) to permit partial disclaimers, such as cutting down a fee interest by a disclaimer of the remainder interest and retaining a life estate or by disclaiming a specified sum of money or a number of shares of stock. Recommends conforming the nonsubstantive rules of sections 303, 6166 and 6166A to enhance administration and predictability.

Taxable gifts

John H. Butala, Jr., Co-Chairman, Taxation Committee, Trust Division, American Bankers Association (*Sept. 8*)

Suggests that all prior valuations for the gift tax, estate tax or Chapter 13 tax should be binding in computing the tax for later transactions. States the rules set forth in Code section 2504(c) should be broadened to cover the value of all prior transfers of an individual for gift, estate or Chapter 13 taxes.

Other items

Frank S. Berall, Chairman, Estate and Gift Tax Reform Committee, The American College of Probate Counsel (*Sept. 8*)

Recommends amending section 1212 to a permit a capital loss carryover from a decedent to his estate and its beneficiaries in a manner similar to the concept of the pass-through from an estate or trust of excess deductions under section 642(h).

Lewis M. Costello, Winchester, Virginia (*Sept. 8*)

Supports the Treasury Department's recommendation to repeal Code section 2035(a) except for gift taxes paid within three years of death and gifts of life insurance made within three years of death.

Also, urges the new percentage tests for qualification under Code section 303 be repealed and the old 35 percent of gross income or 50 percent of taxable income test be reinstated.

William C. Golden, Chairman, Committee on Federal Taxation, Chicago Bar Association (*statement*)

Recommends that Code section 2039(c) be amended to declare that the test for lump-sum treatment should only be the availablity of cash, rather than the availability of both cash and special income tax treatment.

Robert A. Garber, Chairman, Conference Committee, Committee of Banking Institutions on Taxation (*statement*)

States that clarification is needed under Code section 2039(c) with respect to the preservation of the estate tax exclusion where certain parties have a right to select whether distributions are paid in a lump sum or as an annuity. States further that it is not clear which parties may have a right of election without causing the constructive receipt rules to apply. Suggests a deceased employee's trustee should be included in this category. Believes the 60-day election rule of Code section 72(h) is too short a period of time to be applied in the estate situation under Code section 2039(c).

Ernest S. Christian, Jr., Patton, Boggs & Blow, Washington, D.C. (statement)

Suggests making Code 2522(c), relating to gift taxes, parallel Code 2055(e), relating to estate taxes, by permitting a charitable gift tax deduction when the *donor* retains a remainder interest and by allowing reformation of gifts which do not qualify for charitable gift tax deductions similar to the way wills which do not conform to the requirements of Code 2055(e) can be reformed in a judicial proceeding.

William J. Lehrfeld, Webster & Chamberlain, Washington, D.C. (statement)

Recommends a provision stating that a charitable remainder trust is deemed to be created when it becomes irrevocable (with respect to estate and gift tax provisions relating to reformation of instruments to satisfy charitable remainder trust requirements).

Miscellaneous provisions

Rules relating to limitations on percentage depletion in case of oil and gas wells (sec. 2115 of the 1976 Act)

Frank M. Burke, Jr., and Messrs. Breeding & Burton (statement)

Recommends amendment to section 613A(c)(9)(B) to allow the exemption from the transfer rule for oil and gas properties transferred between corporate members of the same controlled group.

Recommends further amending section 613A(d)(2), which accepts certain bulk sales of oil and gas to commercial and industrial users from treatment as retail sale, include sales to governmental entities.

Recommends further amending section 613A(c)(7)(D) to allow certain partnership agreements on a partner's distributive share of income, gain, loss, deduction or credit (as described in section 704(a) to be taken into account in determining a partner's share of the adjusted basis of partnership property for the purpose of computing depletion.

Recommends further that following section 705(a)(3), which provides for adjustment to a partner's basis in the partnership interest arising from depletion computed at the partner level, a new section 705(a)(4) be added to accommodate an increase in basis by the excess of the depletion deduction over the oil and gas property basis.

Cancellation of certain student loans (sec. 2117 of the 1976 Act)

American Council on Education, The National Association of College and University Business Officers, and the Association of American Medical Colleges (statement)

Recommends that section 2117 be amended to make it clear that the tax-free treatment for certain cancellations of some student loans applies to loans under the National Research Service Awards.

Charitable contribution deduction for certain transfers of partial interests in property (sec. 2124(e)(4) of the 1976 Act; sec. 309(b)(2) of the Tax Reduction and Simplification Act of 1977)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that Code sections 2055(e)(2)(B) and 2522(c)(2)(B) be amended to make it clear that the limited time period for making transfers of qualified partial interests in property applies solely to contributions described in Code sections 170(f)(3)(B)(iii) and (iv) relating to certain contributions of partial interests to be used exclusively for conservation purposes.

Application of Code section 117 to certain education programs for members of the uniformed services (sec. 2130 of the 1976 Act)

J. Boyd Page, President, The Council of Graduate Schools in the United States (statement)

States that as a result of section 2130 of the 1976 Act, all recipients after January 1, 1977, of scholarships under the Armed Forces Health Professions Scholarship program and similar programs will be subject to tax on such awards. Urges that this provision be repealed because such taxability significantly erodes the attractiveness of these programs.

American Association of Medical Colleges, American Association of Colleges of Osteopathic Medicine, American Association of Colleges of Podiatric Medicine, American Council on Education, American Nurses Association, and National Association of State Universities and Land-Grant Colleges (statement)

Recommend making the nontaxability of certain government-sponsored scholarship programs covered by this section permanent, eliminating the effective date of January 1, 1977.

Exempt-interest dividends of regulated investment companies (sec. 2137 of the 1976 Act)

Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy (Sept. 8)

Recommends that the 1976 Act amendment of the Code allowing mutual funds to pass-through to their shareholders tax-exempt interest be clarified to make it clear that such interest is to be treated as income of the mutual fund for purposes of the 90 percent and 30 percent tests of Code section 851 dealing with sources of income.

Hon. Gladys Noon Spellman, Member of Congress, Maryland (Sept. 8)

Urges inclusion of provisions of H.R. 5373 which would extend the date to January 1, 1963, by which an organization must be organized to be exempt under sec. 501(d)(14) as an organization providing reserve funds for domestic savings and loan associations, cooperative banks, and mutual savings banks.

Matthew P. Fink, General Counsel, the Investment Company Institute (statement)

Recommends that interest on tax-exempt state and local obligations of a regulated investment company (mutual fund) be considered part of gross income solely for the purpose of computing the 90% and 30% tests for qualifying as a regulated investment company.

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